



Crl.A.(MD)No.455 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 15.09.2023	Delivered on: . .2023
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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.A.(MD)No.455 of 2016

Muthuramu

...Appellant

Vs.

State through
The Deputy Superintendent of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
In Crime No.200 of 2010

... Respondent

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records relating to the judgment in Spl.S.C.No.76 of 2011 dated 07.11.2016 on the file of the Principal Sessions Judge, Ramanathapuram and set aside the same.

For Appellant : Mrs.P.Krishnaveni

For Respondent : Mr.M.Sakthi Kumar,
Government Advocate(Crl.side)



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JUDGMENT

This criminal appeal has been filed as against the judgment and conviction passed by the Principal Sessions Judge, Ramanathapuram in Spl.S.C.No.76 of 2011 dated 07.11.2016, wherein, the trial Court has convicted the accused for the offence under Sections 294(b), 323 IPC and Section 3(1)(x) of SC/ST (POA) Act and the trial Court ordered him to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 294(b) IPC and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 323 IPC and also sentenced him to one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo six months simple imprisonment for the offence under Section 3(1)(x) of SC/ST (POA) Act. Aggrieved by the same, the present appeal has been preferred by the appellant.

2.The case of the prosecution is that on 04.10.2010, when the victim's husband went for fishing in the local pond, the accused scolded him in filthy language and thereby, he returned back to his



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house. When the same was questioned by his wife, at that time, the accused came to the house of the defacto complainant and abused the caste name and also abused in filthy language and also assaulted with stick on her hip and kicked on her stomach and punched on her chest and thereby, caused simple injuries to her. Thereafter, immediately she went to the hospital. On the next day, the police came there and obtained complaint statement/Ex.P.1 and P.W.7/Sub Inspector of Police registered FIR/Ex.P.6 in Cr.No.200 of 2010 for the offence under Sections 294(b), 323 IPC and Section 3(1)(x) of SC/ST(POA)Act. Thereafter, P.W.8 was appointed as Investigating Officer under Rule 7 of SC/ST (POA)Act Rules and he investigated the case and examined witnesses and collected some documents and filed final report as against the accused for the offence under Sections 294(b), 323 IPC and Section 3(1)(x) of SC/ST(POA)Act.

3.After filing final report, copies of the documents, which are relied by the prosecution, furnished to the accused under Section 207 Cr.P.C., and thereafter case was committed to the Special Court i.e., learned Principal Sessions Judge, Ramanathapuram and number was assigned as Spl.S.C.No.76 of 2011. The Special Court after hearing both sides framed charges under Sections 294(b), 323



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IPC and Section 3(1)(x) of SC/ST(POA)Act. The charges were read over and explained to the accused and he denied the charges and claimed to be tried. In order to prove the charges, the prosecution examined P.W.1 to P.W.8 and marked Ex.P.1 to Ex.P.8. No material object was marked. On the side of the accused, no one was examined and no document was marked. After completion of prosecution witnesses, the trial Court has examined the accused under Section 313 (1)(b) Cr.P.C., with regard to the incriminating circumstances adduced as against the accused and he denied the same. After evaluating the oral and documentary evidences adduced on either side, the Special Court found guilty of the accused for the offence under Sections 294(b), 323 IPC and Section 3(1)(x) of SC/ST(POA)Act and ordered him to pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment for the offence under Section 294(b) IPC and sentenced him to undergo six months simple imprisonment and to pay a fine of Rs. 1,000/- in default to undergo one month simple imprisonment for the offence under Section 323 IPC and also sentenced him to one year rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo six months simple imprisonment for the offence under Section 3(1)(x) of SC/ST (POA)Act.



4. Aggrieved by the above said conviction and judgment, the accused has preferred this appeal on the following grounds:-

1. The judgment of conviction passed by the trial Court is against law, weight of evidence, facts and probabilities of the case.

2. The learned Sessions Judge ought to have considered that the P.W.1/defacto complainant/injured witness has turned hostile.

3. The learned Sessions Judge ought to have considered that P.W.2 who is the husband of the P.W.1/ocular witness and P.W.3 who is also an ocular witness are turned hostile. Hence the prosecution failed to prove the occurrence and injuries sustained by the P.W.1.

4. The learned Sessions Judge ought to have considered that the P.W.4 who is magazar witness also turned hostile.

5. The learned Sessions Judge ought to have considered that P.W.5 (Doctor) deposed in his chief examination that P.W.1 did not say who assaulted her.

6. The learned Sessions Judge ought to have considered that P.W.5 (doctor) particularly deposed that the P.W.1 did not say there was punching on her chest and also P.W.5 particularly deposed that there is no injury in her hip.

7. The learned Sessions Judge ought to have considered that one Shanmugam, Nagamani and Veluchamy who are ocular witness and their statement have been recorded and they cited as a witness



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at the time of preparing charge sheet, but they are not examined as a prosecution witness. It is fatal to the prosecution.

8.The learned Sessions Judge ought to have considered that the prosecution had failed to prove the motive between the P.W.1 and petitioner.

9.The learned Sessions Judge ought to have considered that according to the prosecution the petitioner assaulted the P.W.1 with stick. But the P.W.8 (Investigation Officer) had admitted that he did not recover the stick which was used to assault the P.W.1.

5.The learned counsel appearing for the appellant would contend that the evidence of prosecution is highly doubtful and main injured witness/P.W.1 turned hostile and all other eye witnesses also turned hostile. But the Special Court has wrongly convicted the accused by holding that cross examination was conducted after a long gap and thereby, won over by the accused. There is no material to prove that the appellant won over the witnesses and due to non availability of the counsel, the witnesses were not cross examined on the same day and thereby, when the prosecution witnesses were cross examined by the accused, those witnesses were turned hostile. In spite of that, the trial Court has convicted the accused only based on the chief examination. Even



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as per the chief examination, there are major discrepancies and medical evidence also not supported the case of the prosecution. Further, the words uttered by the accused are differ between the evidence of P.W.1 and the complaint. Independent witnesses also turned hostile and P.W.1 has not stated about the injuries sustained by her. According to the medical evidence, the victim sustained injuries on right leg knee. But P.W.1 has not stated anything about the said injuries sustained on the right leg knee. Per contra, she only complained about pain all over the body. Therefore, the prosecution has failed to prove the charges levelled as against the accused beyond any reasonable doubts. But the trial Court failed to consider the same and wrongly, convicted the accused. Therefore, the judgment passed by the trial Court is liable to be set aside and the accused is entitled for acquittal.

6.The learned Government Advocate(Crl.side) appearing for the respondent would contend that the prosecution has examined P.W.1 to P.W.8. P.W.1, who is the injured witness, has categorically deposed about the manner of the occurrence and injuries sustained by her. P.W.2 & P.W.3, who are eye witness of the occurrence, also categorically deposed about the assault made by the accused and the words uttered by him. The evidence of P.W.5 has also



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corroborated with the evidence of P.W.1 with regard to the injuries sustained by her. Therefore, the prosecution has proved its case beyond any reasonable doubts. The trial Court, after elaborate discussions and after evaluating the evidence adduced on the prosecution side, rightly came to the conclusion that the prosecution proved the charges and correctly convicted the accused. Therefore, the present appeal is liable to be dismissed.

7.Upon hearing both sides arguments and on perusing records, trial Court judgment and grounds of this appeal, the point for determination of this appeal is that whether the prosecution has proved the charges for the offence under Section 294(b), 323 IPC and Section 3(1)(x) of SC/ST (POA) Act as against the accused beyond any reasonable doubts.

8.The prosecution case is that the accused belongs to non-sc community and the defacto complainant belongs to SC community. On 04.10.2010, the husband of the victim went for fishing and the accused prevented him from fishing. When the same was informed to the victim, the accused came there and abused the victim in filthy language and also assaulted her. Thereby, he has been charged for the offence under Section 294(b), 323 IPC and Section



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3(1)(x) of SC/ST (POA) Act. It is admitted fact that there is no contravention that the accused belongs to non-sc community and the victim belongs to SC community. In order to prove the same, the prosecution examined P.W.6 and marked Ex.P.4 and E.P.5. As per the evidence of P.W.6, Ex.P.4 and Ex.P.5, the accused is belongs to non-sc community and the victim is belongs to SC community.

9.Now, the specific charge as against the accused are that on the date of occurrence, he abused the caste name of the victim and abused obscene words and also assaulted her with stick and thereby, caused simple injuries. In this case, P.W.1 is main injured witness as well as the defacto complainant and she deposed before the trial Court that on 04.10.2010, at night husband of the victim went for fishing in pond, the accused prevented him and scolded him not to fish in pond. Hence, he returned without fish and when the same was questioned by the victim, the accused came there and abused the caste name by stating that என்னடி சக்கிலிய புண்ட மகளே and also assaulted with stick on her hip and kicked on her stomach and also punched on her chest. One Veluchami and one Rangasamy pacified them. Thereafter, she went to Thiruvadanai Government Hospital and the police came there and she gave a complaint and the same has been marked as Ex.P.1.



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10. On perusal of Ex.P.1 it reveals that on the date of occurrence when she was asked her husband about fishing, the accused came there and scolded the husband of the victim stating that ஏன்டா சக்கிலிய பயலே உன் பொண்டாட்டி இடம் என்னடா சொல்லுகிறாய் என்று சத்தம் போட்டார். Then, when she asked about the same, the accused abused her by stating that என்னடி சக்கிலிய புண்ட மகளே and also assaulted with stick on her hip and kicked on her stomach and also punched on her chest. Therefore, according to the complaint, the accused scolded the husband of P.W.1 and also he assaulted her by abusing the caste name. The evidence of P.W.1 does not speak about the alleged abusing of caste name towards the husband of the victim. Further, as per complaint, the accused assaulted her by plucking the stick. But there is no reference in the evidence of P.W.1 with regard to the plucking of stick. Apart from that the words uttered by the accused are differ from the evidence of P.W.1 and Ex.P.1/complaint. Therefore, reasonable doubt would arise about the evidence of P.W.1. That apart, P.W.1, during her cross examination, she totally turned hostile and she has not supported the case of the prosecution. In this context, the trial Court has discussed that chief examination of P.W.1 was recorded on 04.02.2013 and cross examined on 06.10.2016, after 3 and half



years and the witnesses were won over by the accused. P.W.1 and other witnesses were cross examined at that time, they changed their version and convicted the accused as per the chief examination. Even as per chief examination, there are major discrepancies and the same have not been considered by the trial Court. As per evidence of P.W.1, the accused assaulted her with stick and thereby, she admitted in the hospital. But P.W.5/Doctor, who treated the victim, deposed that he admitted the victim in the hospital and treated her. When she asked about injuries, the victim stated that one known person Muthuraman assaulted her with stick and kicked her on stomach and also punched on her chest. Further, he found contusion on her left leg knee and the victim complained pain all over the body. Thereafter, he gave wound certificate/Ex.P.3 stating that those injuries are simple in nature.

11. According to the evidence of P.W.1, the accused assaulted her with stick on her hip, but, no injuries found on her hip and P.W. 1 has not stated about the injuries on right leg knee. But the evidence of P.W.5 and Ex.P.3 reveals that there was contusion on the right leg knee of P.W.1. Therefore, the evidence of P.W.1 is not corroborated with the medical evidence and the same is not tallied with the medical evidence in respect of the injuries sustained by



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P.W.1. Therefore, the evidence of P.W.1 is highly doubtful.

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12.P.W.2, who is the husband of the victim, during chief examination, he deposed that 04.10.2010, at about 06.00 pm., when he went for fishing, the accused scolded him and restrained him from fishing and thereby, he returned to his house. When his wife asked about the fish, he narrated about the incident, at that time, the accused came there and scolded them and abused caste name. According to the evidence of P.W.2, the words uttered by the accused are totally contra to the evidence of P.W.1 and thereby, there is reasonable doubt would arise as to whether the occurrence was happened as alleged by the prosecution. In chief examination, P.W.2 deposed that the accused assaulted with stick on P.W.1's hip. But there is no injury sustained on the hip of the victim and there is no medical evidence to prove the same. Therefore, the evidence of P.W.2 is not sufficient to prove the charges levelled as against the accused. During cross examination, P.W.2 turned hostile.

13.P.W.3, who is an eye witness to the occurrence, has deposed that on 04.10.2010, at about, 07.00 pm., the accused scolded the victim's husband by stating that என்னடா சக்கிலிய புண்டமகனே உன் மனைவியிடம் சொல்லிக்கொண்டிருக்கிறாய் and when the same was



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questioned by the victim, the accused assaulted her by stating that

என்ன சத்திலிச்ச உன் புருசனுக்கு வக்காலத்து. Therefore, specific words uttered by the accused are differ between the prosecution witnesses. Therefore, the prosecution case is highly doubtful. But the trial Court has failed to consider the above said major discrepancies, which affect the root of the case.

14.P.W.8 has deposed about the investigation conducted by him and as per his evidence he took the case for investigation and examined the witnesses and obtained community certificates of the victim as well as the accused. After examining the witnesses, he filed final report as against the accused. But the evidence of P.W.1 to P.W.3 are contradict to each other with regard to the manner of the occurrence and the words uttered by the accused and evidence of P.W.1 is contra to the medical evidence and thereby, the prosecution has failed to prove the charges levelled as against the accused.

15.As far as the offence under Section 294(b) IPC is concerned, the specific words uttered by the accused are differ between the prosecution witnesses and there is no evidence to prove that due to the words uttered by the accused somebody got



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annoyance. As far as Section 323 IPC is concerned, the specific case of the prosecution is that the accused assaulted the victim with stick on her hip. But no medical evidence to prove as to when the accused assaulted with stick and what injury sustained on her hip. Medical evidence shows that P.W.1 complained about body pain and thereby, the prosecution failed to prove the charge for the offence under Sections 294(b), 323 IPC. That apart, the investigating officer, has not recovered the stick and witnesses also have not spoken about the stick as to whether, after the occurrence, it was taken by the accused or left in the place of occurrence.

16.As far as Section 3(1)(x) SC/ST (POA) Act is concerned, specific words uttered by the accused are contra to each other and further, the prosecution witnesses, at the time of cross examination, they changed their version and thereby, the evidence of prosecution witnesses are filled with doubts. With the available evidences, it is unsafe to convict the accused. Therefore, the prosecution failed to prove the charges and the trial Court has also failed to consider the main aspects and mainly relied only on chief examination of the witnesses. Even as per the chief examination, there are so many discrepancies and the evidence of prosecution witnesses filled with



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doubts and thereby, the judgment and conviction passed by the trial Court are un-sustainable and the same are liable to be set aside.

17.In the result, this criminal appeal is allowed and the judgment and conviction passed by the learned Principal Sessions Judge, Ramanathapuram in Spl.S.C.No.76 of 2011 dated 07.11.2016 are hereby set aside and the appellant herein is acquitted from the charges for the offence under Sections 294(b), 323 IPC and Section 3(1)(x) of SC/ST (POA). The appellant be set at liberty subject to other cases if any. If any fine amount paid by the appellant, the same shall be refunded. Bail bond if any executed by the appellant, the same shall stand cancelled.

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Index :yes/No
Internet:yes/No
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P.DHANABAL, J

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To

- 1.The Principal Sessions Judge,
Ramanathapuram.
- 2.The Deputy Superintendent of Police,
Thiruvadanai Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order
made in
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