



Crl.A.No.379 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.379 of 2018

Purushothaman

... Appellant

Vs.

1. State by Deputy Superintendent of Police,
Panruti Sub Division,
Cuddalore District
(Crime No.281 of 2006)
2. Kumar
3. Ayyappan
4. Manikandan
5. Prabu
6. Kasi @ Kasirajan
7. Rajendiran
8. Deivamurthy
9. Chokkalingam
10. Eattu
11. Krishnakumar
12. Muthukarthi
13. Sivaguru
14. Pandiyan
15. Velmurugan
16. Jayabalan
17. Subramanian
18. Padmanabhan
19. Vetrivel

1/14



Crl.A.No.379 of 2018

20. Gnanavel

21. Saminathan

(A15 to A20 added as accused as per order
on 25.07.2011 in C.M.P.No.2697/2010)

...Respondents

PRAYER: Criminal Appeal filed under Section 378 Criminal Procedure Code, against the Judgment dated 12.06.2017 passed in S.C.No.19 of 2008 by the Principal Sessions Judge, Cuddalore.

For Appellant	:	Mr.Ma.Pa.Mohan
For R1	:	Mr.S.Rajakumar Additional Public Prosecutor
For R2 to R6 and R8 to R21	:	Mr.K.Balu
For R7	:	died and hence the charge against him is abated

JUDGMENT

Challenging the order of acquittal, dated 12.06.2017 passed by the learned Principal Sessions Judge, Cuddalore in S.C.No.19 of 2008, the present appeal is filed by the defacto complainant.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.



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3. The case of the appellant/complainant in a nutshell is as follows :

3.1 The defacto complainant viz., Purushothaman (P.W.1) belongs to Hindu SC Community and residing at Pathirakottai Colony. On 30.10.2006, the defacto complainant contested the local body election. Due to previous enmity one Krishnakumar (A-10) belonging to Pathirakottai Colony attempted to cast a vote impersonating some other person and it was prevented by the booth agent Adhikesavan. Having infuriated over this, the first accused (A1) Kumar along with other accused entered the colony, where the defacto complainant was residing and abused him in filthy language mentioning his caste name and also attacked him with an iron rod and a stick all over his body. They also set fire to the house of one Varadharasu and caused damage to his household articles. They further threatened the persons who were residing in the colony with dire consequences and left the place taking away the deadly weapons which they were carrying.



CrI.A.No.379 of 2018

3.2 In order to bring home the guilt of the accused, the prosecution examined 26 witnesses (P.W.1 to P.W.26) and marked 25 documents (Ex.P1 to Ex.P25) and 31 material objects (M.O.1 to M.O.31).

3.3 All the accused, when questioned under Section 313 of Cr.P.C., with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. They did not examine any witnesses on their side. A copy of the First Information Report in Crime No.959/2006 which was registered based on the complaint lodged by the present defacto complainant on 14.10.2006 was marked as Ex.D1.

3.4 The learned Trial Court Judge, after analyzing the oral and documentary evidence on record, had acquitted all the accused for the offences of which they were charged. Aggrieved over which, the present appeal is filed by the defacto complainant.

4. Heard Mr.Ma.Pa.Mohan, learned counsel appearing for the appellant/defacto complainant, Mr.S.Rajakumar, learned Additional Public



Crl.A.No.379 of 2018

Prosecutor appearing for the State and Mr.K.Balu learned counsel appearing for the respondents/accused.

5. It is not disputed that the defacto complainant belongs to Scheduled Caste Community and the accused belongs to Vanniyar Community. Though it is alleged that the occurrence took place at about 7.00 a.m., on 14.07.2006, the complaint was lodged only at about 1.30 p.m. The evidence of the defacto complainant (appellant) does not fit with in his own complaint (Ex.P1). There are also glaring contradictions in the prosecution witnesses.

6. Though, it is contended that P.W.1 and others were attacked with deadly weapons like iron rod and stick, no external injuries were found on their body. Moreover, the prosecution had not followed the mandatory provisions of Rule 7(1) (a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act before conducting investigation. The Trial Court had in fact analyzed all these aspects and had observed thus:



"59. The entire case was investigated by one Sundaramurthy, Deputy Superintendent of Police, Panruti. Unfortunately now he is no more. During the pendency of trial, the Investigating Officer died. Therefore the present Deputy Superintendent of Police has been examined and he deposed that he knew the facts of the case through files and one Sundaramurthy has taken the case on 14.10.2006 and he went to the place of occurrence and prepared observation mahazar and rough sketch and seized some properties from the houses of victims through separate seizure mahazars. Further he examined the witnesses and recorded their statements and thereafter he remanded the properties to the judicial custody. Further he examined the doctor and obtained accident registers for the injured persons and further he examined Tahsildar and obtained community certificates of both parties and filed his final report.

60. In this case, the prosecution has failed to produce the appointment order for the investigation and not completed the investigation within one month, thereby they failed to follow the mandatory provisions of Rule 7(1) and (2) of SC/ST (POA) Rules. In this context, PW26 in his cross examination stated that காவல் கண்காணிப்பாளரிடமிருந்து வன்கொடுமை தடுப்பு சட்டப்படியான வழக்கை விசாரிக்க விசாரணை அதிகாரிக்கு கடிதம் எதுவும் அனுப்பப்பட்டதாக குறிப்புகள் உள்ளதா என்றால் விசாரணை அதிகாரி நியமித்ததற்கு குறிப்புகள் இல்லை. ஆனால் தகவல் அனுப்பப்பட்டுள்ளது. காவல் கண்காணிப்பாளருக்கு தகவல் அனுப்பியது குறித்த ஆவணங்கள் தாக்கல் செய்யப்பட்டள்ளதா என்றால் இல்லை. Therefore the evidence of PW26 reveals that there is no any reference in the case bundle to show that the appointment order was given to



WEB COPY



Crl.A.No.379 of 2018

Investigating Officer by the concerned Superintendent of Police, DGP or Government.

61. In this context the learned counsel for the A15 to A20 has relied the Judgment in *V.Ponnusamy -vs- State 2016 (3) MWN (Crl.) 148*. On careful reading of the said judgment, it is clear that the Investigating Officer has to be appointed by the Superintendent of Police/D.G.P. or Government after taking into account of his Special Qualification as prescribed under the rules and the investigation has to be completed within 30 days. The said case law is squarely applicable to the present facts of the case, because in the case on hand also, there is no any record to show that the Investigating officer was appointed by Superintendent of Police of DGP or Government. Therefore, the prosecution has failed to establish the charge u/s.3(1) (x) of SC/St (POA) Act.

62. Further the prosecution has failed to examine the Sub Inspector of Police, who was on duty on the particular date of occurrence. In this case PW26 admitted that அப்போது பணியிலிருந்த கப்பிரமணி என்ற காவல் உதவி ஆய்வாளரை இந்த வழக்கில் சாட்சியாக விசாரிக்கவில்லை என்றால் இல்லை. Further all the statements of witnesses have been sent to the court with inordinate delay. In this context, PW26 has admitted that முதலில் பதிவு செய்யப்பட்ட வாக்குமூலங்கள் மற்றும் 9.11.2006 அன்று தயார் செய்யப்பட்ட வாக்குமூலங்கள் அனைத்தும் இறுதியறிக்கையுடன் 3.2.2007 அன்று நீதிமன்றத்திற்கு அனுப்பப்பட்டுள்ளன என்றால் சரி. Therefore it is clear that the statements of witnesses have been sent to the court belatedly.



WEB COPY



Crl.A.No.379 of 2018

63. The learned counsel for the defence has relied the Judgment in Shanmugam -vs- State, 2011 (1) (MWM) Crl.152. On careful reading of the said judgment, it is clear that the FIR and statement of material witnesses dispatched to the court belatedly is fatal to the case and the prosecution has to offer proper explanation. In the case on hand also FIR and statements of material witnesses have been sent to Court belatedly. Therefore, the said case law is squarely applicable to the present facts of the case.

64. Therefore the reasonable doubt would arise about the prosecution case. Further PW26 in his evidence admitted that உண்மையில் வழக்கின் எதிரி மணிகண்டன் என்பவரை அ.சா./புருஷோத்தமன் மற்றும் 6 பேர்கள் தலையில் கத்தியால் வெட்டி காயப்படுத்தியதாகவும் கிராமத்தில் புகுந்து கலவரம் செய்ததாகவும் அவர்கள் வைத்திருந்த டிஜிட்டல் பேனர்களை கிழித்ததாகவும் அது தொடர்பாக மணிகண்டன் நெல்லிக்குப்பம் காவல் நிலையத்தில் புகார் கொடுத்து குற்ற எண்.960/2006 வழக்கு பதிவு செய்யப்பட்டது என்றால் சரி. In this context the defence counsel relied the judgment in Boya Gajji Pedda Venktanna @ Bodenna and others -vs- State 1952 MWN (Crl.) 18. On careful reading of the said judgment, it is clear that in a complaint and counter complaint arising out of the same transactions when the prosecution proceeds on the basis of the complaint, it is the duty of the prosecution to exhibit the counter complaint through the police officer who recorded it and also to prove medical certificates of persons wounded on the opposite side and place before the court a definite case which they ask it to accept. In the case on hand also counter complaint was



given, but the police have not followed the procedures laid down by the Hon'ble High Court and Apex Court. Therefore the reasonable doubt would arise about the prosecution case.

65. Further PW26 in his cross examination stated that வள்ளியை முதல் எதிரி குமார் இரும்பு பைப்பால் அடித்ததாகவும் ஜெகநாதனை ஜெயபால் தடியால் அடித்ததாகவும், சீதாராமனை ம் எதிரி ராஜேந்திரன் தடியால் உடம்பில் அடித்ததாகவும், வீரமணியையும் எதிரி வேல்முருகன், பாண்டியன் மற்றும் சாமிநாதன் ஆகியோர் தடியால் உடம்பில் அடித்ததாக புகாரிலோ அ.சா.1 ன் வாக்குமூலத்திலோ சொல்லியுள்ளாரா என்றால் இல்லை. Therefore PW26 also admitted that according to the FIR there is no any reference about the specific overt act as alleged by PW1 in his evidence deposed before this Court. Therefore the reasonable doubt would arise about the prosecution case. Further PW26 in his cross examination stated that சாட்சி வீரமணி தன்னை சாமிநாதன், பாண்டியன் ஆகியோர் தடி எடுத்து வந்து துரத்தியதாக சொல்லியுள்ளாரா என்றால் இல்லை. ஏற்கனவே பாண்டியன் கத்தியால் பின்பக்கத்தில் தாக்கியதாக கூறியுள்ளாரா என்றால் இல்லை. கத்தியால் வெட்டியதால் தான் மயங்கி விட்டதாகவும் கத்தியை திருப்பி வெட்டியதால் ரத்த காயமில்லை என்றும் கூறினாரா என்றால் இல்லை. சாட்சி சந்திரசேகரன் விசாரணையின்போது தங்கள் வீட்டிலிருந்த மோட்டார் சைக்கிளை அடித்து நொறுக்கியதாக சொல்லவில்லை என்றால் சரி. வன்னியர்கள் போலீசாரை அனுமதிக்கவில்லை என்றும் அதனால் சேதமான பொருட்களை போலீசார் கைப்பற்றவில்லை என்று கூறியுள்ளாரா என்றால் இல்லை. சாட்சி பாலு போலீஸ் விசாரணையில் தன் வீட்டின் இரண்டு



வரிசை ஒருகளை உடைத்ததாக கூறியுள்ளாரா என்றால் இல்லை. சாட்சி அண்ணாமலை விசாரணையின்போது எதிரி சொக்கலிங்கம் தன்னுடைய பி.பி.எல்.டி.வி மற்றும் மீட்டரை உடைத்தார்கள் என்றும் சேதம் மதிப்பு ஒரு லட்சம் இருக்கும் என்றும் சொல்லியுள்ளாரா என்றால் இல்லை. சாட்சி ராமலிங்கம் விசாரணையின்போது தன் வீட்டின் கதவு, கண்ணாடி, தளவாட சாமான்களை அடித்து நொறுக்கியதாக சொல்லியுள்ளாரா என்றால் கதவு பற்றி சொல்லவில்லை, மற்ற விவரங்களை சொல்லியுள்ளார். சாட்சி தில்லை கோவிந்தன் தன் வீட்டில் சைக்கிள், டி.வி.எஸ்50, மின்சார பல்பு, பிளாஸ்டிக் பொருட்கள், தெருக்கதவு, அறைக்கதவு ஆகியவற்றை சேதப்படுத்தியதாக கூறியுள்ளாரா என்றால் டி.வி, டெக்கை சேதப்படுத்தியதாக கூறியுள்ளார், மற்ற விவரங்கள் இல்லை.

66. Further in his cross examination stated that சாட்சி வீராசாமி விசாரணையின் போது எதிரிகள் ஊருக்குள் நுழைந்ததை முந்திரித் தோப்பிலிருந்து பார்த்ததாக கூறியுள்ளாரா என்றால் இல்லை. சாட்சி ஆதிகேசவன் விசாரணையின்போது வள்ளி, சீதாராமன், வீரமணி, பிச்சைக்காரன், குப்புசாமி, ஜெகநாதன், சந்திரசேகர், பாலு, மாயவன் ஆகியோர்கள் போலீஸ் விசாரணையின்போது 15 முதல் 20 எதிரிகள் சம்பவத்தின்போது உடனிருந்ததாகவும் அடித்ததாகவும் கூறியுள்ளார்களா என்றால் இல்லை. Therefore there are major discrepancies between the prosecution witnesses and most of the witnesses have exaggerated the occurrence. According to the evidence of prosecution witnesses, there was some rioting happened on the date of occurrence, but the evidence of prosecution witnesses is highly doubtful in respect of identification of the accused and the



matter of the occurrence. Further there is a case in counter and most of the properties have not been brought before this court and there is a delay in investigation and therefore the reasonable doubt would arise about the prosecution case.

67. As far as the charge against the accused u/s. 147 of IPC is concerned, according to the evidence of prosecution witnesses, a mob of persons more than 200 to 400 people involved in the occurrence, but the FIR has been registered only against 20 persons and there is no specific identification of the accused. The prosecution has failed to investigate about the number of accused involved in the occurrence, there by the prosecution has failed to prove the charge for the offence u/s.147 IPC. As far as the offence against the accused u/s. 148 IPC is concerned, there is no any specific overt act that each of the accused had deadly weapon. Therefore it is not possible to hold that all the accused had deadly weapons and caused rioting and committed the offence u/s.148 of IPC.

68. As far as the offence against the accused u/s. 294(b) IPC is concerned, according to the prosecution case, the accused abused obscene words that தேவடியா பசங்களா ஒக்கால ஒழிங்களா நாங்க ஓட்டுப் போடுவதை தடுக்கிறது எல்லாம் பெரிய தப்பு, but according to the evidence of PW1, பறத்தேவடியா பசங்களா ஒக்கால ஒழிங்களா எங்களையே ஓட்டுப்போடவிடாமல் தடுக்கிறாயா. Further according to the prosecution case, one house of Varadharajan was damaged through setting fire, but the said Varadharajan has not been examined as witness by the prosecution and it creates great suspicious about the occurrence. There are major discrepancies between the prosecution witnesses in



Crl.A.No.379 of 2018

respect of specific words uttered by the accused. As far as the offence against the accused u/s. 324 IPC is concerned, there are major discrepancies between the prosecution witnesses and further the medical evidence is totally contrary to the oral evidence of concerned victim, and thereby the prosecution has failed to prove the offence u/s. 324 of IPC."

7. All the above observations of the Trial Court Judge are perfectly in order and I do not see any reason to interfere with the same.

8. In the result,

i This Criminal Appeal is dismissed.

ii The judgement and orders dated 12.06.2017 passed in S.C.No.19/2008 by the Principal Sessions Judge, Cuddalore is hereby confirmed. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded to them.

10.07.2024

Index : yes/no

Internet: Yes/No

Neutal Citation Case: Yes/No

ssi

12/14



Crl.A.No.379 of 2018

WEB COPY

To

1. The Principal Sessions Judge,
Cuddalore.
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
Criminal Section,
High Court, Madras.



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Crl.A.No.379 of 2018

R.HEMALATHA, J.,

ssi

Crl.A.No.379 of 2018

10.07.2024