



Crl.A.No.744 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM :

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

Crl.A.No.744 of 2016

1. K.Pookadai Rani
2. K.Sarasu

... Appellants

Versus

State rep. by the Deputy Superintendent of Police,
Kallakurichi Sub-Division,
Villupuram District.
Crime No.848/2012 of Kallakurichi P.S.

... Respondent

Prayer : Criminal Appeal is filed u/s.374 of the Code of Criminal Procedure, praying to set aside the conviction and sentence imposed on the appellants by the learned Sessions Judge, Special Court for exclusive trial of cases registered under the Scheduled Castes and the Scheduled Tribes (prevention of atrocities) Act, 1989 Villupuram in Special S.C.No.228 of 2015 dated 13.10.2016.

For Appellants : Mr.C.Munusamy

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been preferred against the conviction and sentence passed in Special S.C.No.228 of 2015 on the file of Special Court for exclusive trial of cases registered under the Scheduled Castes and the Scheduled



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Tribes (prevention of atrocities) Act, 1989 Villupuram dated 13.10.2016.

a) Details of the accused, and residence :	1) K.Pookadai Rani, aged 48 years, W/o. Krishnan 2) K.Sarasu, aged 30 years, D/o Krishnan Both the accused are residing at Kottaimedu, Kallakurichi.
b) Date of commission of the offence :	12.09.2012
c) Name of the complainant :	State through The Deputy Superintendent of Police, Kallakurichi Police Station. (Crime No.848 of 2012)
d) Charges against the accused (offences complained of) :	A1 and A2 : Section 323 of The Indian Penal Code, 1860 and under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. A1 : Section 506 (i) of the Indian Penal Code, 1860
e) Plea of the accused :	Pleader not guilty

2. The case of the prosecution is stated in brief:

- i. *De-facto* complainant Parvathi belongs to Scheduled Caste and the accused 1 and 2 belong to non-Scheduled Caste Community.
- ii. On 12.09.2012, at 6:00 pm, while the *de-facto* complainant was going to the house of Shankar to whom she sold her house, the first and second accused scolded and bet her.
- iii. On 14.09.2012, at 10:00 am she went to the house of Shankar as



mentioned above to take the old doors and door frames.

- iv. The first accused abused her by caste name "பறதேவியா" and by showing the wooden log made threat to the complainant that she would kill her. The second accused abused the *de-facto* complainant by caste name "பறதேவியா" and slapped on her cheek and caused simple injury. The second accused also made a threat to cause death.
- v. The above said offences are punishable under u/s.294 (b), 323 and 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Mr.C.Munusamy, the learned counsel appearing for the appellants Nos. 1 and 2 / accused Nos. 1 and 2 vehemently contended that the complaint was lodged on 14.09.2012 : but the treatment record of the de-facto complainant, Ex.P6 is dated 12.09.2012 : the said discrepancy was not taken into account by the Trial Court : it is his further argument that as per the case of prosecution, P.W.1, P.W.4 and P.W.8 are the ocular witnesses: even as per the evidence of ocular witnesses, charges cannot be considered to have been proved. He also drew the attention of this Court as to the details of the cross examination of investigation officer (P.W.11) : it is the specific answer of



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P.W.11 / investigating officer

"...இரண்டாவது சம்பவத்திற்கு P.W.1

மருத்துவமனைக்கு செல்லவில்லை" and pleaded to allow the appeal.

4. Whereas, Mr.S.Udaya Kumar, the learned Government Advocate (Crl. Side) strenuously argued that in consonance with the charges, the *de-facto* complainant / P.W.1, independent witnesses P.W.4 and P.W.8 have spoken about the occurrence in clear terms. The learned Government Advocate would further contend that P.W.5 and 6 have spoken about the preparation of Observation Mahazar : with regard to the charge under Section 506 (i) of Indian Penal Code. P.W.4 has spoken about the criminal intimidation made by the first accused and pleaded to dismiss the appeal.

5. To substantiate the charges, prosecution examined eleven (11) witnesses and marked nine (9) documents. No witness was examined on the defence side.

6. P.W.1 Parvathi is the *de-facto* complainant herein. P.W.2 Balamurugan is the son of P.W.1/Parvathi. P.W.3 Sekar and P.W.5 Gunasekaran did not support the prosecution case. P.W.4 Sarala and P.W.8



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Indira are ocular witnesses / independent witnesses. P.W.6 Yoganathan is the

Observation Mahazar witness. P.W.7 Thiru.Balasingam, Sub-Inspector of Police of Kallakurichi Police Station. P.W.9 Thiru.Moorthy is the Revenue Official through whom Ex.P.5 – letter issued by the Tahsildar, Kallakurichi as regards the community details of P.W.1 and accused 1 and 2. P.W.10 Dr. Pazhamalai, who gave treatment to P.W.1 and issued accident register for the same (Ex.P.6). P.W.11 Thiru.Saravanakumar is the investigation officer.

7. Among the above said witnesses P.W.4 and P.W.8 have supported the case of the prosecution.

8. It is the evidence of P.W.1 Parvathi / *de-facto* complainant that she belongs to Adi Dravidar Community and before three (3) years, she sold her house to one Shankar. She went to the house to take back her articles. Accused 1 and 2 at about 7:00 pm abused her in filthy language. It is her further evidence that after two days at about 10:00 am, when she went to the house of Shankar in order to bring back her articles. Accused No.2 abused her by caste name " ...பறதேவிடியா வீட்டை விற்றுவிட்டு ஏன் வரவேண்டும் " and slapped her on her cheek. The first accused, chased her with stick. It is her further evidence



that the occurrence was intervened by Sekar, Sarala and Indira and the accused abused the said persons also. She was taken to Kallakurichi Government Hospital by her son and she was under treatment for two days.

9. With regard to the preparation of complaint it is her evidence that on her narration, another person wrote the complaint (Ex.P.1). During her cross examination, when she was questioned that on what date she lodged the complaint she has answered that after she was assaulted immediately she lodged complaint.

10. The son of P.W.1 is Balamurugan P.W.2. It is his evidence that before three years when he came home from his work, he found his mother was crying and he was told that accused assaulted his mother and he took his mother to the Kallakurichi Hospital and she was under treatment for two days in the said hospital.

11. It has come on record through the evidence of Sarala P.W.4 that three years before at about evening 5:00 pm, there was a quarrel between P.W.1 and the first accused. P.W.1 kept quiet. After two days at about 10 am, when P.W.1 went to the house of Sekar to take her household articles, accused 1 and 2



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abused her by caste name "...பறதேவியா உனக்கு இங்கு என்ன வேலை".

When P.W.1 asked them why they were shouting at her, for which the second accused slapped her on her cheek. The first accused by holding the wooden log chased her and criminally intimidated her by stating that she would kill her.

12. From the cross examination of P.W.4 it is inferable that with regard to the plot, often the family of P.W.1 and first accused used to quarrel with each other. After the occurrence, at about 10 am, P.W.1, went to the hospital. The occurrence held in front of her house.

13. Another ocular witness P.W.8 Indira would state that three years before she does not remember the time and P.W.1 Parvathi was sitting in front of her house. The accused went and abused Parvathi. It is her further evidence that in turn Parvathi abused the accused. They quarreled with each other and P.W.1 was assaulted by the accused 1 and 2. The accused 1 and 2 abused P.W.1 by caste name.

14. P.W.4 and 8 belong to non Scheduled Caste Community. No enmity was suggested by the accused side to P.W.4 and 8. They have withstood the cross examination effectively.



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15. Through the evidence of P.W.9 Thiru.Moorthy, the then Tahsildar of Kallakurichi, Ex.P.5 report was issued by him to the effect that the victim belongs to Valluvar community and accused Pookadai Rani and Sarasu belong to Hindu Agamudayar Community.

16. It has come on record through the evidence of P.W.10 Dr.Pazhamalai coupled with accident register Ex.P.6, that on 12.09.2012 at about 10:30 pm, P.W.1 Parvathi was taken to Kallakurichi Government Hospital by her son Balamurugan. On enquiry, P.W.1 has stated that she was assaulted by known two persons on the same day at about 7 pm, in front of her house by stone. The following injuries were sustained by P.W.1 :

1. A contusion measuring 3 x 2 c.m. in the center part of the head,
2. Another contusion measuring 4 x 3 c.m. on her left cheek,
3. Complained of pain all over the body.

17. P.W.10 Dr.Pazhamalai has opined that these injuries are possible as stated by her. Accident register copy is Ex.P.6.

18. The foremost point is that whether the investigation officer was



appointed by his higher official in compliance with Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995. It is the evidence of P.W.11 Thiru.Saravanakumar, Deputy Superintendent of Police of Kallakurichi that on 14.09.2012 he was appointed as investigation officer in Crime No.848 of 2012 of Kallakurichi Police Station u/s.294 (b), 323 and 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The proceedings of the Superintendent of Police Villupuram is Ex.P.7.

19. P.W.11 took up the case for investigation and on the same day at about 15.00 hours went to the place of occurrence and inspected the same in the presence of witnesses Yogananthan and Gunasekaran and prepared Observation Mahazar / Ex.P.8 and rough sketch / Ex.P.9. Witnesses Parvathi, her son Balamurugan, Sekar, Sarala and Indira were examined at the place of occurrence and recorded their statements. Accused No.1 was arrested on 27.09.2012 and sent for judicial custody. He sent a requisition to the District Revenue Officer in order to obtain the Community Certificate for the *de-facto* complainant and for the accused 1 and 2. After examining the Medical Officer, he completed his investigation and laid a final report against the accused 1 and 2 u/s. 294 (b), 323 and 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled



Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. During

the cross examination of investigation officer he would state that in the complaint, there is no mention about the first date i.e., on 12.09.2012. It is also his evidence that as regards the occurrence dated 12.09.2012, no complaint was given.

20. On perusal of Ex.P.1 complaint, it appears that it was given on the date of occurrence. The case was registered by 2:00 pm on the same day in Crime No.848 of 2012 u/s.294 (b), 323 and 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

21. From the holistic perusal of evidence of ocular witnesses and the case records, it is discernible that the *de-facto* complainant Parvathi who belongs to Valluvar Community, sold her plot with house to one Shankar. When she went to the house of Shankar in order to bring the articles, she was abused by the accused.

22. Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is extracted hereunder:



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3. Punishments for offences of atrocities.-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe

(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

23. As per Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, if the person who does not belong to Scheduled Caste or Scheduled Tribe with intention utters words thereby, the person who belong to Scheduled Caste and Scheduled Tribe is insulted or intimidated with an intention to humiliate the person, is an offence under the said provision.

24. The complaint details are extracted hereunder for proper appreciation:

”அனுப்புதல்
பார்வதி (வயது 42)
க/பெ. சுந்தரமூர்த்தி
கோட்டைமேடு
கள்ளக்குறிச்சி.

பெறுதல்



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உயர்திரு உதவி ஆய்வாளர் அவர்கள்
காவல்நிலையம்
கள்ளக்குறிச்சி.

அய்யா,

நான் மேலே உள்ள முகவரியில் வசித்து வருகிறேன். எனக்கு சொந்தமான இடத்தினை விற்றுவிட்டு பக்கத்து தெருவிற்கு குடிவந்துவிட்டேன். நான் விற்ற இடத்தினை வாங்கியவர் இடித்து அதில் உள்ள கதவு மற்றும் அருகால் உள்ளிட்ட பொருட்களை என்னை எடுத்துக்கொள்ளும்படி கூறியதன் பேரில் நான் இன்று 14.9.12 காலை 10 மணிக்கு மேற்படி பொருட்களை எடுக்க சென்றேன். அப்போது கோட்டைமேடு தெருவில் உள்ள பூக்கடை ராணி என்பவரும், ஆவரது மகள் சரசு என்பவரும் நான் வருவதைப் பார்த்து அசிங்கமாக பறத்தேவிடியா வராப்பாரு இடத்தை விற்ற பிறகும் இவ ஏன் இங்க வருகிறாள் என திட்டியதை பார்த்து எனக்கும் உனக்கும் எந்தவித பிரச்சனையும் இல்லையே என்னை ஏன் திட்டுகிறாய் என கேட்டுக் கொண்டு இருக்கும் போதே என்ன தேவிடியா என்னை எதிர்த்து பேசுகிறாய், பறச்சி நாயி உன்னை தொலைச்சிகட்டாம விடமாட்டேன்டி என என் கன்னத்தில் அடித்து அருகில் கிடந்த கட்டையை எடுத்து உன்னை தொலைச்சிகட்டாம விடமாட்டேன்டி என துரத்திவந்தார். உடனே அங்கு பக்கத்தில் இருந்த சேகர், சரளா மற்றும் இந்திரா ஆகியோர்கள் தடுத்து என்னை காப்பாற்றினார்கள்.

ஆகையால் கனம் அய்யா அவர்கள் மேற்படி,



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நபர்கள் மீது நடவடிக்கை எடுக்குமாறு கேட்டு
கொள்கிறேன்.

இப்படிக்கு,

பார்வதி.

கள்ளக்குறிச்சி.

14/09/17.

அய்யா.

இன்று 14.9.2012ம் தேதி 14.00 மணி காவல் உதவி
ஆய்வாளர் R.பாலசிங்கம் ஆகிய நான் நிலையத்தில்
அஜரில் இருந்த போது கள்ளக்குறிச்சி கோட்டைமேடுத்
தெருவைச் சேர்ந்த சுந்தரமூர்த்தி மனைவி பார்வதி
என்பவர் நிலையம் ஆஜராகி கொடுத்த புகார் மனுவைப்
பெற்று நிலைய கு.எண்.848/12 u/s 294 (b), 323, 506 (1) r/w
3 (1) (x) of SC-ST Act-ன் படி வழக்கு பதிவு
செய்யப்பட்டது.

Sd/-..

14/09/2012"

25. From the evidence of P.W.4 Sarala it appears that often P.W.1 and
the first accused used to quarrel with each other.

26. From a careful perusal of entire evidence coupled with records, it
appears that, the occurrence took place in front of the house of P.W.4 Sarala.



The words within public view found in Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 means that the public must have viewed the person being insulted.

27. This Court in *Mariammal V. State of Tamil Nadu* reported in 1998 (1) MWN (Cr.(349).

(i) *Sambasivam and anr. v. State rep. by Deputy Superintendent of Police* reported in 2007 (1) MLJ (Crl) 654.

(ii) *Viswanadhula Chittibabu v. State of A.P.* reported in 2002 (4) ALR (iii) *V.P.Kuppurao v. Director General of Police, Tamil Nadu Government DGP Office* reported in 2010 1 MLJ (Crl) 247

(iv) *Athimula Gounder and another v. State of Tamil Nadu rep. by Deputy Superintendent of Police*

(v) *Chengee Taluk* reported in 2006 2 MLJ (Crl) 256

(vi) *H.Thenmozhi v. Inspector of Police P.R.C.Unit, St.Thomas Mount Police Station, Chennai and anr.* reported in 2 M.L.J. (Crl) 463

(vii) *Thangarasu and another v. State* reported in 2010 CRI.L.J.1299

(viii) *Venkatesan @ Venkateswaran and 13 others v. State rep. by Deputy Superintendent of Police Gudiyatham, Vellore District and another*



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in Crl.O.P.No.4849 of 2010 dated 15.11.2012. It was held that in non-compliance of Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 is fatal to the prosecution case.

28. It is the candid evidence of the Investigating Officer P.W.11 that the complaint doesn't spell out about the occurrence which took place on 12.09.2012. P.W.10 Dr.Pazhamalai has stated that the *de-facto* complainant was treated by him on 12.09.2012. The evidence of P.W.10 Dr.Pazhamalai and Ex.P.6 accident register have to be ignored and thereby the said portion of evidence are not taken into consideration. Therefore, the first charge which is framed against both the accused u/s.323 of Indian Penal Code need to be taken into consideration.

29. As regards the charge u/s.3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.W.1 has stated that she was abused by the accused name by the second accused. P.W.1 has not stated anything against the first accused in consonance with the said charge.

30. P.W.4 Sarala has given an omnibus statement. P.W.8 Indira has not spoken in specific terms about the abusive language spoke by the accused.



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31. The *de-facto* complainant P.W.1 has in particular stated that besides abusing her by caste name, the second accused slapped her on her cheek, which was corroborated by the evidence of P.W.4 Sarala.

32. The charge u/s. 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is framed against the first accused. P.W.1 has stated, that the first accused chased her with stick. Therefore, based on the said discussions it is concluded that the charges u/s. 323 and 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as against A1 are not proved by the prosecution beyond any reasonable doubt. The charges as against second accused u/s. 323 of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands proved beyond reasonable doubt by the prosecution.

33. In fine Accused No.1 is found not guilty u/s. 323 and 506 (i) of the I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and ordered to be acquitted u/s.235(1) of Code of Criminal Procedure. In result the Criminal Appeal is partly allowed.



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34. As regards the second accused is concerned, the judgment and conviction passed u/s. 323 of I.P.C r/w Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 stands confirmed.

35. After the appeal time is over, the Trial Court is directed to return the fine amount and the bail bond executed by Accused No.1 stands cancelled. The Trial Court is directed to secure Accused No.2 and commit her to prison for serving the sentence imposed by the Trial Court within a period of two months from the date of receipt of copy of this judgment. The sentence period already undergone shall be set off.

27.02.2024

Index : yes/no

Speaking order/Non-speaking order

rap

Note: Registry is directed to send the original records to the Trial Court forthwith.

R.KALAIMATHI, J.,

RAP



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To
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- 1.The Sessions Judge, Special Court, Villupuram.
- 2.The Deputy Superintendent of Police,Kallakurichi Police Station,
Villupuram District.
- 3.The Public Prosecutor, Madras High Court.

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