

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:23.11.2015

Delivered on:18.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.1131 of 2007

Murugasamy Gounder

... Appellant/Accused

vs.

State by Inspector of Police,
Kamanaicken Palayam P.S.,
Coimbatore District

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment made in Spl.S.C.No.4 of 2007, on the file of the Special Court cum Principal Sessions Court, Coimbatore, dated 12/12/2007.

For appellant : Mr.S.Duraisamy for Mr.V.Elangovan

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

Challenge in this criminal appeal is to the convictions and sentences passed in Special Sessions Case No.4 of 2007, dated 12.12.2007, by the Special Court/Principal District Court, Coimbatore.

2. The case of the prosecution is that on 30.09.2006, at about 2.00 p.m., while the defacto complainant along with her daughter by name Parimala has grazed cattle in RRB Wind Mill, the accused has called the defacto complainant by using her caste intentionally, scolded her by using filthy words and also tried to outrage her modesty. Further the accused has attacked the defacto complainant and her daughter and thereby caused injuries. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.299 of 2006 by the investigating officer, viz., P.W.8. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, P.W.8 has conducted investigation, examined connected witnesses and after completing the same, laid a final report on the file of the District Munsif-cum-Judicial Magistrate, Palladam and the same has been taken on file in P.R.C.No.42 of 2006.

4. The District Munsif-cum-Judicial Magistrate, Palladam, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 3(1)(x) (two counts) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, second charge against him under Section 294-B of the Indian Penal Code, third charge against him under Section 354 of the Indian Penal Code and fourth charge under Section 323 (2 counts) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 8 have been examined and Exs.P1 to P9 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 3(1)(x) of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to undergo six months rigorous imprisonment and also imposed a fine of Rs.1000/- with usual default clause. He has also been found guilty under Section 294(B) of the Indian Penal Code and imposed a fine of Rs.1000/- with usual default clause. The accused has also been found guilty under Section 354 of the Indian Penal Code and sentenced to undergo six months rigorous imprisonment and also imposed a fine of Rs.1000/- with usual default clause. He has also been found guilty under Section 323 of the Indian Penal Code and imposed a fine of Rs.1000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The consistent case put forth on the side of the prosecution is that the defacto complainant and her daughter by name Parimala belong to Scheduled Caste, whereas, the accused belongs to some other caste. On 30.09.2006, while the defacto complainant and her daughter have grazed their cattle in RRB Wind Mill, the accused has called them

by using their caste intentionally and also hurled invectives against the defacto complainant by using filthy words and also attacked her with an intention to outrage her modesty.

10. The defacto complainant has been examined as P.W.1 and her daughter by name Parimala has been examined as P.W.2 and both of them have consistently stated about the place, details of occurrence and also the actual words uttered by the accused. The Doctor, who treated the defacto complainant has been examined as P.W.7 and his specific evidence is that he found the following injuries on the person of the defacto complainant, as mentioned in the wound certificate.

"(1) C/o pain over the left arm and back

(2) C/o.pain over the scalp

(3) C/o.pain over the lower abdomen

(4) C/o.Pain over the right leg

(5) C/o.pain over the cheek"

11. The trial Court, after considering the evidence given by vital witnesses, has invited convictions and sentences against the appellant/accused as mentioned in the judgment. The learned counsel appearing for the appellant/accused has raised the following points to set aside the convictions and sentences passed against the appellant/accused:

(a) The accused has not acted intentionally and therefore, Section 3(1)(x) of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not applicable to the present case;

(b) The occurrence has not taken place in a place of "public view".

12. In support of the contentions raised on the side of the appellant/accused, the following decisions are relied upon:

(a) In 2001 CrI.L.J.4587 (Delhi High Court) - Mukesh Kumar Saini and others vs. State (Delhi Administration) Delhi, it is held that:

"7. The basic ingredient of the offences under clause (x) of Sub-Section (1) of Section 3 of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are:

(a) that there must be an 'intentional insult' or 'intimidation' with "intend" to humiliate SC/ST member by a non SC/ST member; and

(b) that insult must have been done in any place within the "public view"

(b) In 2009 CrI.L.J. 3837 (Bombay High Court) - Mahesh Sakharam and Others vs. State of Maharashtra, it is held that:

"5. The offence, in the present case, occurred in the courtyard of the complainant's house. It is not a public place. The provision of Section 3(1)(x) of the Act does not use the expression "public place", but instead the expression used is "in any place within public view". There is a clear distinction between the two expressions. If a private place, such as the courtyard of a residential house, can be seen by someone from road or lane outside the boundary wall, and if the incident occurred at such a place is audible and visible to the people, it would, indubitably constitute an offence under Section 3(1)(x) of the Act, it being a place within public view. In other words, a place of offence can be a private place, but if the remarks made, with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe, are audible and/or if members of public have viewed the incident, even if the incident occurred at a private place, such as the courtyard of a house, in my opinion, it would constitute an offence under Section 3(1)(x) of the Act. It is evident from the statement of Objects and Reasons of the Act that it was enacted to prevent indignities, humiliation and harassment to the members of SC/ST community. Therefore, while interpreting the expression "in any place within public view" will have to be read to mean that"

13. From a close reading of the decisions referred to earlier, it is made clear that for invoking Clause (x) of Sub Section (1) of Section 3 of the the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, two ingredients are very much essential, namely, that there must be an "intentional insult" or "intimidation" with "intend" to humiliate SC/ST member by a non SC/ST member and the occurrence has to take place in a place within the "public view".

14. In the instant case, as noted down earlier, plethora of evidence is available with regard to occurrence, details of words uttered by the accused against P.Ws.1 and 2 and also physical attack made by him on the person of the defacto complainant. In fact, on the side of the appellant/accused, the evidence adduced by the defacto

complainant and other connected witnesses have not been challenged. On the side of the appellant/accused, the aforesaid legal points have been raised.

15. It has been seen from the records that the occurrence has taken place in RRB Wind Mill while P.Ws 1 and 2 have grazed their cattle. Considering the fact that the occurrence has taken place in such a place, it is needless to say that the said place is having "public view". Now, with regard to the other legal contention raised on the side of the appellant/accused, the Court is having abundant evidence to the effect that the accused has acted intentionally with a view to create "intimidation" in the minds of P.Ws 1 and 2.

16. It has already been pointed out that the appellant/accused has not simply uttered the caste of P.Ws.1 and 2 and gone to the extent of attacking P.W.1 and in fact, he caused simple injury on her person. Therefore, viewing from any angle, the Court can unflinchingly come to a conclusion that both ingredients of Clause (x) of Sub Section (1) of Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are very much present in the present case. Therefore, the legal contentions put forth on the side of the appellant/accused are of no use.

17. The trial Court, after considering the available evidence on record, has rightly found the accused guilty under Sections mentioned supra. In view of the discussion made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused and altogether the present criminal appeal deserves to be dismissed.

In fine, this criminal appeal is dismissed. The convictions and sentences passed in Special Sessions Case No.4 of 2007, by the Special Court-cum-Principal Sessions Court, Coimbatore, are confirmed. If the appellant/accused is not in custody, the trial court is directed to take appropriate steps so as to immure him in prison.

Msk

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub-Assistant Registrar

To :

1. The Inspector of Police,
Kamanaicken Palayam Police Station,
Coimbatore District
2. The Special Court cum Principal Sessions Judge,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras
4. The District Munsif Cum,
Judicial Magistrate, Palladam
5. The Chief Judicial Magistrate,
Coimbatore

+1 C.C. To MR.S.Doraisamy, Advocate in SR.NO.68626

judgment in
Crl.A.No.1131 of 2007

SKV(CO)
sd : 04/01/2016



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