

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-11-2016

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

Criminal Appeal No.474 of 2009

1. Manimeglai
2. Pandiyan
3. Madhaiyan

Appellants/A-1 to A-3

vs.

State Represented by:
The Inspector of Police,
Adhiyamankottai,
Dharmapuri District.

Respondent/Complainant

This criminal appeal is filed under Section 374(2) Cr.P.C., against the judgment of the learned Special Judge/Principal Sessions Judge, Dharmapuri made in S.C.No.20 of 2009 dated 5.8.2009.

For Appellants : Mr.V.Rajamohan
For Respondent : Mr.R.Sekar, G.A.(Crl.side)

JUDGMENT

A-1 to A-3 in the Sessions case in S.C. No.20 of 2009 on the file of the learned Special Judge under SC/ST (PA) Act/Principal Sessions Judge, Dharmapuri are the appellants.

2. A-1 has been tried for charges under Sections 3(1) (iii), 3(1) (xi) and 3(1) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter, in short, SC/ST Act]. A-2 and A-3 were tried for charges under Section 3(1) (xi) and 3(1) (x) of SC/ST Act.

3. After trial, the learned Special Judge acquitted all the accused from the charge under Section 3(1) (iii) of the said Act. However, convicted them on the remaining charges and sentenced them as detailed below:

Accused	Conviction	Sentence
A-1	(i) Section 3(1)(x) of SC&ST (P.A.) Act;	(i) 1 year RI and fined Rs.1,000/- in default 3 months S.I;
A-2 & A-3	(i) Section 3(1)(xi) of SC&ST (P.A.) Act; (ii) Section 3(1)(x) of SC&ST (P.A.) Act;	(i) 1 year RI and fine Rs.1,000/- in default 3 months RI; (ii) 1 year RI and fine Rs.1,000/- in default 3 months S.I;

The learned Special Judge directed the sentences imposed upon A-2 and A-3 shall run concurrently. They have paid the fine amount.

4. The case of the prosecution in brief runs as under:

(1) PW-2 is son of A-1 and A-2. A-3 is A-2's brother's son. They are 'Vannias' (Most Backward Class) (Exs.P-1 to P-3 Community Certificates). PW-1 is an 'Adi Dravida' (Scheduled Caste) (See Ex.P1 Community Certificate). All belongs to Adhiyamankottai in Dharmapuri District.

(2) While PW-2 was a teacher in a Teacher Training Institute, PW-1 was his student. The teacher and the student fell in love. On 7.9.2006, they have married. But their love marriage was not approved by the accused.

(3) On 3.4.2008, at about 8 p.m., in Ottapatti, Dharmapuri, PWs-1 and 2 were walking near a School and a Vinayaga Temple. At about that time, A-1 to A-3 came. They have scolded PW-1 in foul language and also called her by her caste. A-1 beaten PW-1 on her back with chappels. A-2 kicked PW-1. A-3 pulled her jacket and pushed her down. This occurrence was witnessed to by PW-2.

(4) On 5.4.2008, at about 11.30 a.m., at the Adhiyamankottai Police station, PW-1 gave Ex.P-1 complaint to PW-4/ S.I. of Police. He registered a case in Cr.No.373 of 2008 for offences under Section 355, 354, 323 I.P.C. r/w Sec.3(1) (x) of SC/ST (PA) Act, 1989.

(5) After taking into account his sense of ability and justice to pursue the investigation of the case, the Superintendent of Police, Dharmapuri appointed PW-5/D.S.P, Dharmapuri to investigate this case (Ex.P-4 S.P.'s order).

(6) PW-5 took up his investigation. He examined PWs-1 and 2 and other witnesses and recorded their statement. Visited the scene place. Prepared Ex.P-5 Observation Mahazar in the

presence of witnesses. Drew Ex.P-6 Rough Sketch. Obtained Community Certificates for PW-1 and the accused from PW-3/Tasildhar. On 5.8.2008, completing his investigation, PW-5 filed the Final Report before the committal Magistrate for offences under Sections 3(1) (iii), 3(1) (xi) and 3(1) (x) of SC/ST (PA) Act against the accused.

5. The learned Magistrate took cognizance on the said final report. Furnished copies of documents to the accused under Section 207 Cr.P.C. Since the offences are exclusively triable by a Special Court, committed the case to the Special Court under SC/ST Act/Principal Sessions Court, Dharmapuri.

6. The learned Special Judge upon hearing both sides and on consideration of the case-records framed charges against the accused. They pleaded not guilty to the charges.

7. Prosecution examined PWs-1 to 5 and marked Exs.P-1 to P-9.

8. When the learned Special Judge examined the accused under Section 313 Cr.P.C. on the incriminating aspects in the prosecution evidence, the accused denied the offences. They examined Thamizharasi, S.I. of Police, Dharmapuri Town Police Station as DW-1. A-1 examined herself as DW-2. The accused have also marked Exs.D-1 to D-9.

9. Appreciating the arguments of both sides and the evidence adduced, the learned Special Judge while acquitting them from Charge No.1, convicted them under Charge Nos.2 and 3 and punished them as already stated.

10. Aggrieved, they have directed this Criminal appeal.

11. Mr.V.Rajamohan, learned counsel for the appellants would contend that this prosecution is legally impermissible. Prosecution must establish all the ingredients prescribed for the offences beyond all reasonable doubts. In this connection, the learned counsel cited Gorige Pentiaiah vs. State of A.P. [(2008)12 SCC 531].

12. The learned counsel further contended that as per Section 3(1) (x) SC&ST Act, the offence should have been committed in public view. Some public should present and view the occurrence. However, in the instant case, the evidence discloses that at the time of the alleged occurrence, except PWs-1 and 2 none were present. PW-2, being the husband of PW-1, will not be a member of the public.

13. In this connection, the learned counsel cited Daya Bhatnagar and another vs. State [2004(2) JCC 1136] and Victor Paul & another vs. State [(2002) MLJ (Cr1.) 202].

14. The learned counsel for the appellants also contended that as per Rule 7(2) of the Rules framed under SC/ST Act, investigation must be completed within 30 days, otherwise it will be in violation of the said Rule and the prosecution is vitiated.

15. In this connection, the learned counsel for the appellants cited, Sekar & another vs. State [(2012)1 MLJ (Cr1.) 590], Periyasami and another vs. State [(2015)3 MLJ (Cr1.) 573] and V.Ponnusamy vs. State [(2016)1 MLJ (Cr1.) 668].

16. The learned counsel for the appellants further contended that because the accused have not approved PW-1's love marriage with PW-2, PW-1 had grouse against the accused. Thus she had implicated them in this case.

17. The learned counsel for the appellants further contended that the alleged occurrence was on 3.4.2008 at 8 p.m. However, the FIR was lodged after three days i.e. On 5.4.2008. The delay was not explained. The FIR is not free from doubt.

18. The learned counsel for the appellants further contended that as per the evidence of PWs-1 and 2 on the date of occurrence itself, PW-1 had lodged a complaint with the Inspector of Police, Adhiyamankottai Police Station. They have also given a complaint before the Superintendent of Police, Dharmapuri. Thus, the real FIR is suppressed. The present FIR is fabricated. The prosecution case is highly doubtful.

19. The learned counsel for the appellants further contended that PWs-1 and 2 gave contradictory evidence. They have strong motive against the accused. They lack credibility.

20. On the otherhand, Mr.R.Sekar, the learned Govt. Advocate (Cr1.side) would contend that the accused and PW-1 belongs to different castes. PW-1's love marriage with PW-2 was not approved by A-1 to A-3. They have enmity towards PW-1. They have driven away PW-2 from their house. In the circumstances, the occurrence had taken place.

21. The learned Government Advocate further contended that PW-2 himself had deposed as against his parents/ A-1 and A-2. PW-1 was victim in this case. In such circumstances, the learned Special Judge has rightly appreciated the evidence adduced, convicted and sentenced them.

22. The decisions cited by the learned counsel for the appellants are not applicable to the facts and circumstances of this case.

23. I have anxiously considered the rival submissions, perused the impugned judgment, materials on record and the decisions cited by the learned Counsel for the appellants.

24. Now, the question is whether the charges under Sections 3(1) (xi) and 3(1) (x) of SC/ST (PA) Act 1989 have been proved by the prosecution beyond all reasonable doubts ?

25. From Exs.P-7 to P-9, it is very clear that PW-1 is an 'Adi Dravida' (Scheduled Caste) and A-1 to A-3 are 'Vannias' (Most Backward Class). PW-2 is a son of A-1 and A-2. He loved PW-2. On 7.9.2006, they got married. But their marriage was not accepted by A-1 to A-3. So PWs-1 and 2 lived separately.

26. In this backdrop of the matter, on 3.4.2006, at about 8 p.m., in Ottapatti, in Dharmapuri, near an Industrial Training School and a Vinayaga Temple, the occurrence is alleged to have taken place.

27. According to prosecution, A-1 to A-3 were alleged to have scolded PW-1 in filthy language and called her by her caste, A-1 had beaten PW-1 with chappel on her back, A-2 kicked her on her back, while A-3 pulled her jacket and pushed her down and PW-2 had witnessed the occurrence.

28. Section 3(1) 3(x) and (xi) of the Scheduled Castes and the Scheduled Tribes (Privention of Atrocities) Act, 1989 reads as under:

'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."

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or Scheduled Tribe with intent to dishonour or outrage her modesty;''

29. For an offence under Section 3(1)(x) there should be assault or use of criminal force to a woman belonging to SC/ST community with an intention to dishonour or outrage her modesty. For an offence under Section 3(1)(x) there should be

intentional insult or intimidation to a member of SC/ST community in any place within public view.

30. In Gorige Pentaiah vs. State of A.P. [(2008)12 SCC 531] the Hon'ble Supreme Court while dealing with a case under Section 3(1) (x) observed as under:

''.....

When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.''

31. Prosecution is bound to prove all the ingredients prescribed for the offences beyond all reasonable doubts.

32. In Victor Paul and another vs. State [(2002) MLJ (Cr1.) 202] with regard to the phraseology ''public view'' employed in Section 3(1)(x) of SC/ST Act, a learned Judge of this Court observed as under:

''4. the word ''public view'' is not defined in the Act. The dictionary meaning of the word ''public'' is ''open to the people as a whole''. the dictionary meaning of the word ''view'' is vision or sight as from a particular position. Reading these two meanings together in the context of the words ''public view'', it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place within ''public view'' or in any other place within ''public view''. In either situation, the essential element that requires to be established is that it was in ''public view''. The word ''public view'' in the Section is preceded by the word ''in any place within''. Therefore, it is clear to my mind that insult or intimidation should be in a place within public view.''

33. In Gowra Gobinda vs. State of Orissa, [(2000)2 Cr1.L.J. 1978] it was held as under:

''8. In the present case, both P.Ws.2 and 5 are silent regarding the presence of any member of public at the time of the alleged occurrence though P.W.5 has stated that some persons reached the spot when there was hurling of abuse by

the appellants. Even if it is believed for the sake of arguments that the appellants had called P.Ws.2 and 5 by their caste, they could not have intended to insult them in public view and merely calling someone by his caste does not constitute an offence. To attract the provisions of the Act, it is necessary that it should be in place where public could view the incident. In a case of this nature, the trial Court should exercise care and caution before holding accused guilty of the charge, especially when the chances of falsely implicating the accused by persons in authority cannot be ruled out.

Therefore, it is clear from the above case laws that the offence falling under Sec.3 (1) (x) of the Act should have been committed in any place within 'public view' and if this element is not present, then the conviction cannot be sustained.'

34. In Karansingh vs. State of Madhya Pradesh {(1992)3 Cr1.LJ 3054} it was held as under:

'5. From the material on record in the case diary, further it cannot be said that the incident took place at a place within public view. The words used in the provision are in any place within 'public view and not in a 'public place'. There is clearly a distinction between an incident taking place within public view and an incident taking place within public place.'

35. In E.Krishnan Nayanar vs. M.A.Kuttappan {1997 Cr1.LJ 2036} it was held as under:

'18. As stated by me earlier the words used in Sub-sec.(x) are not 'in public place, but within public view which means the public must view the person being insulted for which he must be present and no offence on the allegations under the said Section gets attracted.'

36. In Chandra Poojari vs. state of Karnataka [(1998)1 Cr1.L.J. 53] it was held as under:

'''the alleged incident in that case had been taken place in the chamber of the

complainant, who was working as the commercial tax officer. The argument raised on behalf of the accused, that assuming the allegations are true, yet the occurrence having taken place in the chamber of the complainant, it cannot be said that the offence was committed in any place within 'public view' was accepted.

37. In Victor Paul (supra), the learned Single Judge of this Court took the view that for the purpose of the phraseology 'public view' employed in Section 3(1) (x) of SC/ST Act, public must present and view the occurrence.

38. The expression 'public view' employed in Section 3(1)(x) of the SC/ST Act, came for consideration in a case before a Division Bench of the Delhi High Court. In the said case, the defacto complainant is a member of Scheduled Caste. He was staying in a flat along with his family. The accused were residing in the same flats. They were alleged to have called the defacto complainant and his wife by their caste. It was contended that the occurrence did not take place in public view as no public person was present. Justice V.S. Agarwal (as His Lordship then was) took the view that for the purpose of 'public view' employed in Section 3(1) (x) of SC/ST Act, it is not necessary that a huge crowd must present, it is enough two or more members of the public were present, heard and viewed, as four persons residing in the same flats viewed the occurrence, the occurrence had taken place in public view.

39. However, Justice B.A. Khan (as His Lordship then was) took the view that the persons who were present and viewed must be independent persons, it will not include his friends, Associates, neighbours and thus the residents of the same flats will not be independent persons, so the occurrence had not taken place in 'public view'.

40. The said tangle was referred to a third Judge, namely, Hon'ble Justice S.K. Agarwal [Daya Bhatnagar vs. State of Delhi {(2004) (109) DLT 915}].

41. Hon'ble Justice S.K. Agarwal endorsed the view of Hon'ble Justice B.A. Khan and observed as under:

'19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(i) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However,

Sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of 'Insult', 'intimidation' and 'humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within 'public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

42. Thus from the language used in Section 3(1)(x) of the Act and the above survey of case-laws, it is very clear that for an offence under Section 3(1) 3(x) of SC&ST Act, at the time

of occurrence, some independent members of the public should hear and view the utterances made by the accused towards a member of the Scheduled Caste/Scheduled Tribe Community.

43. In the circumstances, in the case before us, for the purpose of Section 3(1)(x) of the Act, PW-2, the husband of PW-1, will not be a member of the public.

44. In the case before us, the occurrence had taken place on 3.4.2008, at about 8 p.m., near Ottapatti, along a National Highway. PWs-1 and 2 admits that then, except them and A-1 to A-3 no other person was present. Thus, the alleged occurrence had not taken place in a place within 'public view'.

45. PWs-1 and 2 belongs to different castes. Theirs is an intercaste marriage. PW-2's parents did not approve their marriage. Even on 11.3.2006, PW-1 had lodged a complaint with Dharmapuri Town police station that Pugazhendi, brother of her husband and others have kidnapped her husband. A case has been registered in Cr.No.276 of 2008. This was also confirmed by DW-1/S.I. of Police, Dharmapuri Town Police station. PW-1 also admits that earlier she gave complaint as against her in-laws. Thus, both sides are in inimical terms. They have strong motive.

46. In this backdrop of the matter, the occurrence is alleged to have taken place.

47. In a cognizable case, the earliest version as to the commission of an offence is reported (FIR) to the police under Section 154 Cr.P.C. There should not be delay in reporting the occurrence to the police. It is intended to prevent embezzlement of truth, introduction of story-telling. Any unexplained delay will result in doubting the very FIR and also the prosecution version of the case.

48. The occurrence is stated to have taken place on 3.4.2008 at about 8 p.m. Only on 5.4.2008, at about 11.30 a.m., at the Athiyamankottai Police Station, PW-1 gave Ex.P-1 complaint to PW-4/ S.I of Police. Based on that PW-4 has registered the FIR. The distance between the occurrence place and the Police Station is just 3 Kilometers. However, PW-1 took 3 days to lodge the FIR.

49. PW-4/S.I or PW-5/ D.S.P who investigated the case did not offer any explanation as to the said delay. They were completely silent on this aspect.

50. PW-1 had stated that on 4.4.2006, they have met the Superintendent of Police, Dharmapuri, gone to D.S.P., Dharmapuri and then came back to Athiyamankottai Police Station. According to PWs-1 and 2, on 3.4.2006, at about 8.30 p.m., at

the Athiyamankottai Police Station, they gave a complaint to the Inspector of Police and they have lodged another complaint on 5.4.2008 and that is the present FIR. All goes to show that the real FIR in this case has been suppressed. Thus, the present FIR is fabricated. Thus the FIR in this case not free from doubt.

51. At one point of time, PW-2 supports his parents (See Exs.D-1, D-2, D-5 and D-6). At another point of time, he supports his wife. He did not want to be inimical to either. Now, he has turned the table against his parents. He lacks credibility. It is too dangerous to rely on his evidence. As already stated PW-1 has strong enmity towards her in-laws/A-1 to A-3. It is quite unsafe to rely on her evidence.

52. Before the enactment of SC/ST (PA) Act, there was Protection of Civil Rights Act to protect certain categories of vulnerable people from the harassment of other caste people. Subsequently, the present SC/ST (PA) Act, 1989 came. Under the said Act, Rules have been framed. Its Rule 7 runs as under:

"7. Investigating Officer.--(1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/ Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government."

53. Rule 7 emphasis that the offence has to be investigated by a prescribed Police Officer, he must give top priority to this type of cases and he must also complete the investigation within 30 days.

54. In Sekar and others vs. Deputy Superintendent of Police, Pudhuchatram {CDJ 2011 MHC 5916} this Court held as under:

'47. In so far as the present case

on hand is concerned Sub-Rule 2 to Rule 7 has been violated by P.W.8. of course, the investigation seeks to have been completed within a period of one month from the date of registration of the case. As per the case of the prosecution the FIR was registered on 17.11.2004 and as per the evidence of P.W.8 he has filed the charge sheet on 7.12.2004 i.e. within one month period the investigation was completed and the charge sheet was also filed. But P.W.8 has miserably failed to submit a report to the Superintendent of Police. After receiving that report, the Superintendent of Police shall immediately have to forward the report to the Director General of Police of the State Government. It is therefore, clear that the second para of Sube-Rule 2 has not been complied with by P.W.8.

55. In Periyasamy and another vs. State [(2015) 3 MLJ (Crl.) 573] as well as in V.Ponnusamy vs. State [(2016) 1 MLJ (Crl.) 668] this Court remarked about non-compliance of the said Rule 7(2).

56. In the present case, FIR was registered on 3.4.2008 by PW-4/S.I of Police. PW-5/D.S.P., Dharmapuri completed the investigation only on 5.8.2008 and filed the Final Report before the committal Court. Thus, it is well beyond 30 days. Thus, the investigation officer/PW-5 has not followed Rule 7(2).

57. Long back in 1945 in King Emperor vs. Khawaja Nazir Ahmad {AIR 1945 PC 18}, the Privy Council held that in India the process of investigation is the province of police. However, when the investigation has been done in breach of any mandatory provisions of law or Rules prescribed thereunder or done malafidely the Court will interfere.

58. The said Rule is directed towards the Investigation Officer. It is a statutory direction, mandate to the Investigation Officer. He is bound to follow the rules.

59. In the light of the above, violation of said Rule 7(2) cannot be simply ignored. A prosecution based on violation of Rule 7(2) is vitiated.

60. In view of the foregoings, the prosecution has thoroughly failed to establish the charges under Sections 3(1) (xi) and 3(1) (x) of SC/ST (PA) Act framed as against the accused beyond all reasonable doubts.

61. In the circumstances, it is held as under:

(1) This Criminal Appeal is allowed.

(2) The conviction and the sentence awarded by the learned Special Judge under SC&ST (P.A.) Act/Principal Sessions Judge, Dharmapuri in S.C.No.20 of 2009 are set aside.

(3) The appellants/accused are acquitted under Sections 3(1)(xi) and 3(1)(x) of SC/ST (PA) Act.

(4) Fine amount paid shall be refunded to them.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Copy to:

- 1.The Special Judge under SC/ST (PA) Act/Principal Sessions Judge, Dharmapuri.
- 2.The Judicial Magistrate No.II, Dharmapuri
- 3.The Chief Judicial Magistrate, Dharmapuri.
- 4.The Superintendent, Central Prison, Salem.
- 5.The Deputy Superintendent of Police, Dharmapuri.
- 6.The Inspector of Police, Athiyamankottai Police Station, Dharmapuri District.
- 7.The Public Prosecutor, High Court, madras.

+1 cc to Mr.N.Mohideen, Advocate,sr.67586.

gj(co)
krd 14/12

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