

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.02.2017	Delivered on : 13.02.2017
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CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.142 of 2011

State rep. By
The Deputy Superintendent of Police
C.B.C.I.D.,
Villupuram District
Ulundurpet P.S.
Crime No.159 of 2007 ...Appellant/Complainant

vs.

1.P.Veeran
2.N.Rajavelu Respondents/Accused 1 & 2

Criminal Appeal filed under Section 378 Cr.P.C., against the judgment dated 29.01.2011 in S.C.No.50/2010 on the file of Special Judge [Principal Sessions Judge], Villupuram Sessions Division, Villupuram.

For appellant : Mr.E.Raja, Additional Public Prosecutor
For Respondents : Mr.S.Selvathirumurugan for R1
Mr.M.Muthappan for R2.

JUDGMENT

The respondents herein are the accused in S.C.No.50 of 2010 on the file of Special Judge [Principal Sessions Judge], Villupuram Sessions Division, Villupuram. The accused stood charged under Section 4 of Tamil Nadu Prevention of Women Harassment Act, under Section 342, 376 (2)(a)(g) of IPC and under Section 3(2)(v) of S.C/S.T.(P.O.A) Act, 1989. By judgment dated 29.01.2011, the trial court acquitted both the accused. Aggrieved over the same, the State has come forward with this appeal, challenging the acquittal of the respondents/accused 1 and 2.

2. The case of the prosecution is as follows:-

[a] Both the accused were working as Head Constable in Tamil Nadu Police. A-1/Veeran was attached to Ulundurpet Police Station and A-2/Rajavel was attached to Elavanasoorkottai Police Station as a Special Branch Head Constable. A-1/Veeran belonged to Hindu Vanniyar Community and A-2/Rajavel belonged to Hindu

Navithar community.

[b] The husband of the alleged victim lady Jaya died in a road accident during 2005 and as she was not able to get any compensation for the same, it is alleged that A-1/Veeran who was incharge of Edaikal Police out post, on the occurrence day 19.02.2007, fraudulently asked the victim Jaya to come to police station under the pretext of arranging to get compensation for her husband's death by sending word through one Thangaraj, who functioned as Part time Sweeper at the said police station out-post. Accordingly, when the victim lady turned up at the police station out post at about 3 p.m, of 19.02.2007, she was asked by the 1st accused to come and meet her by 8 p.m, When the victim lady returned back to the police out post at 8 p.m, on the same day, the 2nd accused was also present with the 1st accused in the said police out post. According to the victim lady, she was asked to come inside the rest room within the said police station and on her entry into the room, she was given a tumbler of coloured water by the 1st accused and she was compelled to drink the same, inspite of her protest. Thereafter, inspite of her refusal to drink, the 1st accused locked the door from inside and asked her to stay along with him for the night in the room. When she protested and refused to stay, she was compelled to consume liquor by the 1st accused and as she became semi conscious and fainted, the 1st accused raped her against her consent and 2nd accused also committed rape on her against her will and both committed the offence knowing well that the victim lady belonged to SC/ST community and thereby, the accused alleged to have committed offence under Section 4 of Tamil Nadu Prevention of Women Harassment Act, under Section 342, 376 (2) (a) (g) of IPC and under Section 3(2) (v) of S.C/S.T.(P.O.A) Act, 1989.

3. [a] It is stated by P.W.1 that he is working as LIC agent and about 3 years back, when he returned to Ulundurpet from Neyveli, around 10 p.m., got down near Anna Statue in Ulundurpet. He found a group of people assembled near Ulundurpet Police Station. He went there and enquired the reason for the same and at that time, the Deputy Superintendent of Police, Ulundurpettai asked him to write down a petition as per his direction and accordingly he wrote down the complaint and signed in it. The said complaint is Ex.P.1. P.W.1 also stated that he gave a statement under Section 164 Cr.P.C., before the concerned court and the same is Ex.P.2. The victim lady who deposed as P.W.2 stated that about 1 ½ years before the present alleged occurrence, her husband died in a road accident and in that regard, a case was registered in Ulundurpettai Police Station.

3.[b] P.W.2 also stated that she is working as a cook in Ramakrishna Mutt at Aziz Nagar and during 2007, as she was at her home, around 3.30 p.m., one Thangaraj came and informed her that the 1st accused Veeran asked her to go to the police

station. When she went to the police station at Aziz Nagar, she was asked to come by 8 p.m on the same day and when she returned to the Police Station, the 1st accused gave her a coloured drink and when she refused to take it, the 2nd accused/Rajavel bolted the door and then the 1st accused/Veeran asked her to stay with them for a night. When she refused and asked them to open the door, the accused did not open the door; thereafter, both the accused committed rape against her will and subsequently both the accused locked the door, went out, returned back after some time and again had physical intercourse with her. According to her, subsequently, the Deputy Superintendent of Police came there and asked her about the occurrence and she was sent to hospital. P.W.2 also stated that she was examined by Police for 4 times and statement given by her under Section 164 Cr.P.C., is Ex.P.3. She also stated that M.O.1 to M.O.3 dress material worn by her at the time of occurrence was handed over to the police by her under Ex.P.4 (Form 95). She also stated that the 1st accused was wearing M.O.4 to M.O.6 dress material and 2nd accused was wearing M.O.7 to 9 dress material at the time of occurrence. She also identified M.O.12 mattress which was there at the occurrence place.

3.[c]. P.W.11-Dr.Nalini deposed that while on duty at Ulundurpet Government Hospital, on 20.02.2007, at 9.10 p.m., a lady by name Jaya, aged about 38 years was brought for medical check up with police memo and on examination, she found no external injuries on the private parts and she reported no pain. P.W.11-doctor also stated that there was no symptoms of forcible intercourse and no sperm was found in private part and the certificate issued by her is produced as Ex.P.15.

3. [d] The Inspector of Police, while deposing as P.W.19 stated that on 19.02.2007, at 9.30 p.m., on intimation from Ulundurpet Police Station, he proceeded to Edaikal Police Out post and reached there at 10.45 p.m., at that time, the Deputy Superintendent of Police-P.W.17 Naveen Chandra Nagesh, Sub Inspector of Police and patrol party constables were present and agitated public were also present. P.W.19 stated that the victim lady Jaya and accused Head Constable 332 Veeran was sent with police escort for medical treatment from Edaikal Out post. Subsequently after returning to Ulundurpet Police Station, on the same night, viz., on 20.02.2007 at 00.45 hours, P.W.1-Sethuraman came to police station and lodged Ex.P.1/complaint. On receipt of the same, P.W.1 stated that he registered a case in Ulundurpet Police Station Crime No.159 of 2007 under sections 354, 342 IPC and produced the said First Information Report as Ex.P.25. Further P.W.19 stated that the victim lady Jaya after taking treatment returned to the police station out post on 20.02.2007 and identified the occurrence spot and accordingly in the presence of witnesses, P.W.19-Inspector of Police prepared observation mahazar Ex.P.26 and rough sketch of the occurrence spot-Ex.P.27. He also recovered M.Os from the occurrence spot as

per Ex.P.28-seizure mahazar. P.W.19 also stated that he arrested the 1st accused-Veeran at 1 p.m., on 20.02.2007 and secured his dress material and sent the accused Veeran for medical examination. P.W.9 also stated on the same day at 10 pm, he secured 2nd accused Rajavel from Ulundurpet Police Station and recovered the dress worn by him in Form 95. P.W.19 further stated that he gave requisition for recording the statement of victim lady and another witness under section 164 Cr.P.C and as per the order dated 27.02.2007 passed by Chief Judicial Magistrate, Villupuram, he examined the witnesses recorded their statements and after obtaining community certificate, he assisted the RDO to conduct enquiry about the occurrence and thereafter he got transferred.

3.[e] The Investigating Officer of the case P.W.20 deposed that while working as Inspector of Police in Ulundurpet Police Station, he took up the case in Crime No.159 of 2007 and proceeded with further investigation of the case from 25.03.2007 and he recorded the additional statement of the victim lady Jaya and on completion of investigation, he altered the offence and added 376 IPC and submitted an alteration report-Ex.P.29. Following the orders passed by this court, P.W.20 handed over the investigation to Deputy Superintendent of Police who deposed as P.W.21.

3.[f] According to P.W.21, he took up the investigation in Ulundurpet Police Station Crime No.159 of 2007 and forwarded 22 material objects for chemical analysis and examined the doctors and obtained report regarding the potency of the accused and subsequently examined the victim girl Jaya and other witnesses and recorded the statement. Thereafter, he handed over the case file to P.W.22-Deputy Superintendent of Police for further investigation.

3.[g] The said Deputy Superintendent of Police who deposed as P.W.22 stated that after taking up investigation in the above said case, obtained community certificate of the victim lady and altered the case by including the Section 3(2)(v) and (xii) of SC/ST Act and submitted alteration report Ex.P.31. Thereafter, he handed over the case to Deputy Superintendent of Police viz., Parthasarathy for further investigation. Subsequently, as per the direction of Superintendent of Police, he took up the case again for further investigation and after examining the witnesses and after obtaining Ex.P.32, chemical analysis report, he laid the charge sheet on 31.12.2008.

3.[h] Based on the above materials, the trial court framed charges against the accused as detailed in the judgment under challenge. Both the accused denied the charge. To prove the guilt of the accused, the prosecution examined P.W.1 to 22 and produced Ex.P.1 to P.32 and M.O.1 to M.O.20. Out of the said witnesses, the complainant who deposed as P.W.1, is not an eyewitness to the occurrence. The other independent witnesses, examined as P.W.1, P.W.5, P.W. 7, P.W.9, have turned hostile and

failed to support the case of the prosecution.

4. As stated above, the victim lady Jaya who deposed as P.W.2 has stated that she was summoned to the Edaikal Police out post by the accused through P.W.7 and there both the accused committed rape on her, inspite of her resistance. As stated above, the prosecution examined other witnesses to prove the allegation against the accused. When the incriminating material available in the evidence to P.W.1 to P.W.22, was put to the accused under Section 313 Cr.P.C. they denied the same as false. The accused examined 2 witnesses as D.W.1 and D.W.2 and also produced Ex.D.1 as defence document on their side. The accused denied the occurrence in full. After considering all the materials, both the oral and documentary evidence placed before it, the trial court found the guilt of the accused as not proved and acquitted them. Aggrieved over the said finding of the trial court, acquitting the accused, the State has come forward with this appeal.

5. The learned Additional Public Prosecutor appearing for the appellant/state contended that reasons stated by the trial court for acquitting the accused are not tenable and the conclusion arrived at, is not sustainable. According to the learned Additional Public Prosecutor, the trial court failed to appreciate the evidence of victim lady properly. It is further stated that the trial court disbelieved the evidence of prosecution witnesses without any reason. It is also pointed out that the evidence of P.W.13-RDO who enquired and submitted the report about the occurrence as well as the statement given by the witnesses under Section 164 Cr.P.C., before Judicial Magistrate, who deposed as P.W.18 was not considered properly by the trial court. The trial court failed to appreciate the evidence let in by the prosecution about the occurrence spot which is police out post being in control of the accused and the same was utilised by them to physically assault the victim lady. The trial court failed to appreciate the medical evidence let in by the prosecution to prove the alleged act of rape committed by the accused. The evidence of the victim lady P.W.2 is cogent and clear and the same is supported by medical evidence, but the trial court erred in appreciating the same properly. Thus the learned Public Prosecutor contends that the finding of the trial court is unsustainable and the same is liable to be set aside and the accused are liable to be convicted and sentenced.

6. Per contra, the learned counsel for the accused vehemently opposed the appeal and stated that presumption of innocence is further strengthened by the acquittal of the accused by the trial court. According to the learned counsel for the respondents/accused, the complaint itself is false and the same is motivated one due to enmity between the accused and the

higher officials. The learned counsel for the accused contended that the fact of victim lady brought to the police station by P.W.7 is not established and the claim of the victim lady about the compulsion to take liquor and thereafter physically assaulted by the accused is not substantiated and no material is available to prove it and therefore, the finding of the trial court is in order. It is also pointed out that the trial court has given cogent reasons for disbelieving the evidence placed by the prosecution. The learned counsel for the accused also contended that the conclusion arrived at by the trial court need not be interfered with, unless the reasons stated for arriving at such conclusion by the trial court was considered to be baseless and the finding as perverse. According to the learned counsel for the respondents, since the trial court has given valid reasons for arriving at such a conclusion, there is no need to interfere with the same and pleads for dismissal of the appeal.

7. In the case on hand, as stated above, it is contended by the prosecution that the victim lady P.W.2-Jaya was brought to the police out post by P.W.7-Thangaraj, where the accused 1 and 2 were on duty and after the victim lady was forced to consume liquor, she was raped by both the accused in the rest room inside the police out post itself. The complaint about the occurrence is lodged by P.W.1 Sethuraman who is not an eyewitness to the occurrence. P.W.1 turned hostile and failed to support the prosecution case. According to P.W.1, when he returned to Ulundurpet from Neyveli at 10 pm, he saw a group of people from his Village near Ulundurpet Police Station and he went there to enquire about and there he was asked by the Deputy Superintendent of Police, Ulundurpet to write down a petition as dictated by him and accordingly he wrote down and after signing in it, submitted the same to the police. According to him, Ex.P.1 is the complaint written down by him as directed by Deputy Superintendent of Police. P.W.1 stated that in his cross examination as follows:-

“புகாரில் உள்ள விவரங்களை டி.எஸ்.பி. சொல்ல சொல்ல நான் எழுதினேன். நீதிமன்றத்தில் பதிவு செய்துள்ள வாக்குமூலத்திலும் போலீசார் எவ்வாறு சொல்லவேண்டுமென்று சொன்னதன் பேரில் தான் நான் வாக்குமூலம் கொடுத்தேன். கள்ளக்குறிச்சி டி.எஸ்.பியிடம் துறை விசாரணை நடந்தபோதும் டி.எஸ்.பி சொன்னதை தான் நான் சொன்னேன். எனக்கு நேரடியாக எதுவும் தெரியாது.”

Thus the complaint itself is stated to be dictated and written down as per the police direction by the complainant-P.W.1. In such circumstances, as rightly contended by the learned counsel for the accused, doubt arises as to whether really the complaint was lodged by P.W.1 on actual facts as claimed by the prosecution.

8. According to the prosecution, the occurrence is stated to have taken place in Edaikkal police out post within the

Ulundurpet Police Station limits. In the said complaint-Ex.P.1, it is stated that on the occurrence date, at about 8.30 pm., on hearing the hue and cry from the police out post in Aziz Nagar, Ulundurpet, about 15 villagers assembled there and learnt that one Jaya was given alcohol and subsequently a hue and cry occurred. It is further alleged in the complaint-Ex.P.1 that one Veeran and another Policeman committed some mischief and the complainant has asked for investigation into the occurrence. Thus the complaint does not say anything about the victim lady being raped by the accused as claimed by the prosecution. Further as stated earlier, P.W.1 has turned hostile and categorically stated that he do not know anything personally about the occurrence and the contents of the complaint was written down as directed by the Deputy Superintendent of Police. It is also pointed out that there is variation about the occurrence spot between what is stated in Ex.P.1-complaint and the oral evidence of complainant P.W.1. In such circumstances, it is contended that the place of occurrence is not fixed by the prosecution properly. According to the prosecution, the victim lady was asked to come to the police station on the occurrence day at about 3.30 pm., by sending word through P.W.7-Thangaraj who was working as menial in the police station. The victim lady P.W.2 stated in her evidence that while she was at her home at about 3.30 p.m., one Thangaraj came and informed her that the 1st accused Veeran wanted her to come to police station. P.W.2 stated that accordingly she went to the police station and there, she was asked to come again to the station by 8 pm. However, the said Thangaraj who deposed as P.W.7 denied the same. P.W.7 stated that he is working as Sweeper in Edaikal out post and he knew the 1st accused and the alleged victim Jaya since she belonged to his village. According to P.W.7, he did not know the 2nd accused Rajavel. He further stated that he did not know anything about the occurrence and did not ask P.W.2 Jaya to come to the station as per the 1st accused direction. Thus the claim of P.W.2-Jaya about being asked by P.W.7-Thangaraj to come to police station as per the instruction of the 1st accused is not substantiated. In that background, it is to be seen whether the alleged act of rape stated to have been committed by the accused is established beyond reasonable doubt.

9. The victim lady P.W.2 is stated to be aged 39 years. P.W.2 stated that on her arrival at Aziz Nagar Police out post at about 8 p.m., she was told that higher officials will come and asked to wait. At that time, the 1st accused Veeran gave her cool drink, but she refused to drink, then A-2 Rajavel locked the doors and A-1 told her to stay with them in the night. She refused to stay back and asked him to open the door, but A-1 refused to do so and thereafter, both the accused, after wearing condom had sexual intercourse with her. Thereafter, when she

tried to go out, the accused prevented her from going out. P.W.2 stated that she vomited inside the room itself and thereafter, police came and opened the door and took herself and A-1/Veeran to the hospital. P.W.2 also stated that since A-1 threatened to kill her, if she stated anything about the occurrence, she did not inform anyone about the incident. P.W.2 also stated that when she went to the court at Ulundurpet, since all those present were men, she did not disclose anything about the occurrence as she was embarrassed to do so. The statement given by her under Section 164 Cr.P.C, is produced as Ex.P.3. Thus P.W.2 stated after being forced to take cool drink, she fainted and the accused forcibly had physical relationship with her. Now it is to be seen whether the victim lady is forced to consume alcohol as claimed by the prosecution. The victim lady was examined by P.W.3-Dr.Anbumani on 20.02.2007. According to him, a lady named Jaya was brought with the police memo around 2.20 a.m on 20.02.2007 and he examined her immediately. According to him, there was no smell of liquor and he sent the lady's blood and urine for examination. As per the report received on 1.3.2007, no trace of liquor was found in it. Hence P.W.3 doctor gave his opinion as evidenced by Ex.P.5 certificate that the said lady Jaya has not consumed alcohol on that day. P.W.3 also deposed in his evidence that he found the lady Jaya conscious and her breathing was normal. It is evident from Ex.P.5 certificate that the opinion was given on the basis of endorsement made in chemical analysis report. The trial court, after considering the said materials accepted the finding of P.W.3 doctor that the victim lady has not consumed liquor before the alleged occurrence. In such circumstances, the claim of the prosecution that the accused Veeran forced the victim lady Jaya to consume alcohol before the alleged occurrence is not established before the court.

10. According to P.W.17, the then Deputy Superintendent of Police at Ulundurpet on 19.02.2007, as per intimation received over phone, around 10 pm., reached the police out post and found the lady in unconscious stage and also saw 3 liquor bottles and used glasses. P.W.17 Deputy Superintendent of Police also stated that he saw the 1st accused Veeran sitting in that out post in a drunken condition. He further stated that he sent the 1st accused Veeran in a Patrol Van to Ulundurpet Police Station and asked Sub Inspector of Police to come to the spot and on his arrival to the spot within 15 minutes, he sent the lady Jaya found in unconscious stage to the police station in the patrol vehicle. According to P.W.17 he directed to take the victim lady Jaya for medical examination. Thus P.W.17 has stated that the victim lady was found in an unconscious mood and A-1 under influence of alcohol. However, as disclosed above, the medical evidence has categorically refuted the said claim of the prosecution about the victim girl being under the influence of alcohol on the

occurrence day.

11. Now it is to be seen whether A-1/Veeran was found under the influence of alcohol. The said accused Veeran was examined by P.W.3 Dr.Anbumani and he has stated that on 20.02.2007 he examined one Veeran brought to Ulundurpet Government Hospital with Police memo and he found him in conscious state with normal breathing. P.W.3 also stated that he was not found to have consumed liquor and he collected the urine and blood samples of A-1 Veeran and forwarded the same for examination. As per the said chemical analysis report, he issued Ex.P.6 certificate stating that the person concerned has not consumed any liquor. Thus, the claim of the prosecution as stated by P.W.17 that the 1st accused Veeran was found in drunken mood at occurrence spot along with victim lady in an unconscious state could not be believed as medical evidence and the chemical analysis report categorically states that there was no trace of alcohol was found regarding the 1st accused. Thus the claim of the prosecution that the victim lady Jaya was brought to the police station by P.W.7 Thangaraj and she was forced to consume alcohol by A-1 and A-1 was in drunken condition is not established and the finding of the trial court in that regard is just and proper.

12. P.W.2 Jaya stated that after she took the soft drink offered by the 1st accused Veeran, she was physically assaulted by both the accused and they had physical relationship with her despite her protest. P.W.4 doctor who examined A-1 Veeran has issued Ex.P.7 certificate stating that the said person was potent. Thus A-1 is stated to be a potent person. Likewise, P.W.12 doctor who examined A-2 Rajavel has issued Ex.P.16 certificate stating the said person was potent. It is to be seen whether they had physical relationship with the victim lady as claimed by the prosecution. Admittedly there is no eyewitness to the occurrence. The person examined as P.W.5 to speak about the presence of the accused and the victim lady together at the police out post on the occurrence day, has turned hostile and denied any knowledge about the occurrence. In such circumstances, the prosecution has relied upon the medical evidence to prove the alleged act of accused. However, the doctor who examined the victim lady who deposed as P.W.11 has categorically stated that there was no symptom of victim Jaya being forced to have physical relation ship with any person on the occurrence day. P.W.11 stated in her evidence that after examining P.W.2, she has not found any external injury on the body of the victim lady. P.W.11 also stated that no injury was found in the private parts of the victim lady and has not detected any tenderness in the private part of the victim lady. P.W.11 doctor also stated that the blood sample and swap was taken from private part and the same was sent for chemical

analysis and no blood, semen or hair was detected as per chemical analysis report Ex.P.32. On the basis of her personal examination, the said doctor P.W.11 issued Ex.P.15 certificate, wherein, it is categorically stated that there is no symptom of physical relationship by the accused with the victim lady as claimed by the prosecution. Thus, there is no independent witness or acceptable medical evidence to establish the fact of rape committed by the accused on the victim lady.

13. The victim lady who deposed as P.W.2 identified the dress material worn by her as M.O.1 to M.O.3. The Sub Inspector of Police who deposed as P.W.15 deposed that on 19.02.2007, at about 9 p.m., ad directed by the DSP of Police, he reached Edaikal Police out post and brought the victim Jaya lying down inside the police out post after vomiting and A-1 was found sitting in the footstep of the police out post. He also stated that he found used tumblers and liquor bottles in the occurrence spot and the same is identified as M.O.13 to M.O.17. He also stated that 2 condoms marked as M.O.18, Police diary-2 as M.O.19 was also recovered and the sample of the vomited portion was collected as M.O.20. Thus the prosecution stated that the accused used condom to have physical relationship with the victim lady and alcohol was used before the occurrence. However, as stated earlier, there is no material to show that the victim as well as the accused were in drunken state and had physical relationship. In such circumstances, the recovery of the above M.O.s will not be of any use to establish the case against the accused. P.W.2 Jaya, the victim in the alleged occurrence has stated that as she was threatened by the 1st accused, she did not inform the police about the occurrence and as all those present in the Ulundurpet court were men, she did not give full details of the occurrence. She further stated that after gaining conscience she has not given any written complaint about the occurrence. She further stated that she was detained in the Ulundurpet police station for the whole day still she never informed anyone about the occurrence as she was threatened by the 1st accused. She further stated that she was asked by Advocate Lucia to inform the Magistrate about the occurrence, but she did not tell anything to the Magistrate when she was produced before him. Thus, P.W.2 contention that she never informed anyone about the occurrence, even after she was rescued by the police, casts a doubt about the veracity of her statement in chief. In the light of the above said discussion, it is clear that the prosecution has failed to prove the alleged act of rape by the accused and consequently the other allegations against them also could not be believed. According to the defence, there was some misunderstanding between the accused and the higher official and due to that, this false case was foisted against them by the higher officials by making use of P.W.2/Jaya. The defence side examined D.W.1 and D.W.2 and also produced Ex.D.1

document and on the basis of the said evidence, it is contended by the defence that the case is foisted against them falsely. Taking into consideration all the above said factors, it is clear that the evidence of P.W.2 is not supported by any corroborative evidence and as P.W.2 evidence is not trust worthy and believable, on the basis of the said sole testimony of the alleged victim, it cannot be concluded that the accused were involved in the alleged act of rape. It is therefore clear that the prosecution has miserably failed to prove the guilt of the accused and the finding of the trial court in that regard is just, correct and proper.

14. The prosecution has contended that the victim belonged to SC/ST community, A1/Veeran belonged to Hindu Vanniyar Community and A2/Rajavel belonged to Hindu Navithar community and by their conduct, have committed offence u/s.3(2)(v) of the Act. Nothing is stated by any of the witnesses about any words used by the accused about the community of the victim lady. Likewise, nothing is stated by any of the witnesses that the victim lady was physically abused by the accused knowing that she belonged to SC/ST community. Further PW2/Jaya the victim lady herself admitted in her evidence that she belongs to Kallar community from birth. The RDO who conducted enquiry into the occurrence while deposing as P.W.13 has stated that the victim lady Jaya informed him during enquiry that she belonged to Kallar community and the said community is a Backward community. It is therefore, clear that the victim lady herself having admitted about her community status and as such she cannot be treated as a member of SC/ST community. P.W.10 the then Thasildar of Ulundurpet stated that the victim belonged to SC/SCT community; A-1/Veeran belonged to Hindu Vanniyar Community and A-2/Rajavel belonged to Hindu Navithar community and the certificate given by him is Ex.P.14. However, as the victim herself has stated differently, P.W.2 evidence lack credibility in the absence of any supporting material.

15. In the light of the above said materials placed before the court, the claim of the prosecution that P.W.2 Jaya belonged to Adi Dravidar community and she was assaulted and abused by the accused who belongs to backward community and thereby they committed offence under Section 3(2)(v) of the SC/ST act, as stated above cannot be accepted. Further there is nothing on record to show that necessary permission of the Superintendent of Police was obtained to proceed with the investigation of the case under relevant provisions of the SC/ST act. In such circumstances, the charge against the accused under Section SC/ST act is also not established beyond reasonable doubt by the prosecution.

15. The learned counsel for the appellant relied upon the ruling in the case of Oikattan Vs. State., rep. By the Inspector

of Police, Gangaikondan Police Station, Tirunelveli and others reported in 2016-1-L.W.(Crl)190 and contended that in the appeal against acquittal, unless the view taken by the trial court is found to be perverse and totally untenable, it is not permissible for this court to substitute its views in the place of view taken by the trial court. Following the above said ruling and in view of the discussion stated above this court is of the view that the judgment of the trial court does not suffer from any infirmity warranting interference at the hands of this court. In the result, the criminal appeal fails and the same is dismissed. The judgment passed by the trial court is confirmed.

s/d-
Assistant Registrar (CS-V)

//True Copy//

Sub-Assistant Registrar

To

1. The Principal Sessions Judge, Villupuram Sessions Division Villupuram.
2. The Deputy Superintendent of Police C.B.C.I.D., Villupuram District, Ulundurpet Police Station, Crime No.159/2007
3. The Public Prosecutor , High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras

+1 CC to M/s. M. Muthappan, Advocate sr 9402

+2 CC to M/s. S. Selvathirumurugan, Advocate sr 9273

Judgment
in Crl.A.142 of 2011

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