

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.588 of 2009

Suresh

... Appellant

vs.

The State of Tamil Nadu
Rep. by the Deputy Superintendent of Police,
Villupuram Sub Division,
Villupuram.
(Crime No.628 of 2005)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 07.09.2009 passed by the learned
Principal Sessions Judge, (Special Court), Villupuram, in S.C.No.144
of 2006.

For Appellant : Mr.A.B.Ashok

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The sole accused, in Sessions Case No.144 of 2006, on the
file of the learned Principal Sessions Judge,(Special Court),
Villupuram, is the appellant herein. He stood charged for offence

under Sections 294(b) and 323 IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The trial Court, after trial, by judgement dated 07.09.2009, convicted the appellant/accused for the offence under Section 323 IPC and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs.500/- in default, to undergo, simple imprisonment for two months and convicted the appellant/accused for the offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.10,000/- in default, to undergo, six months simple imprisonment and the appellant/accused is acquitted for the offence under Section 294(b) IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) P.W.1 is the defacto complainant in this case. He borrowed a sum of Rs.5,000/- from the accused, with interest at the rate of 5% per month and he repaid a sum of Rs.7,000/- in several instalments and a sum of Rs.2,500/- alone is due to the accused. On 21.10.2005, when the accused demanded money from the defacto complainant, he sought for time to repay the said amount. At that time, the accused scolded him with filthy language and

abused him by calling his caste name, and also kicked him on the face. Then, he went to the Government Hospital, Tindivanam, where, P.W.2, the Doctor has treated him as an out patient. Subsequently, on 23.10.2005 at about 11.00 p.m., he lodged a complaint before the respondent police station.

(ii) P.W.7, the Sub Inspector Police, attached to the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.628 of 2005, for the offence under Sections 294(b) and 323 IPC and Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act,1989, prepared a first information report [Ex.P5] and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.8, the Deputy Superintendent of Police, Villupuram, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P3] a rough sketch [Ex.P6] in the present of witnesses. Then, he obtained a community certificate of accused as well as P.W.1. He examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed

charges as detailed above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 9 witnesses, exhibited 7 documents and no material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the injured eye witness. According to him, he borrowed money from the accused with 5% interest per month and he repaid a sum of Rs.7,000/- and a sum of Rs.2,500/- only due to the accused. On the date of occurrence, when the accused demanded money from him, he sought for time to repay the same. At that time, the accused scolded him with filthy language and abused him by calling his caste name and also kicked him on the face and caused injuries. Immediately, he went to the hospital and taking treatment and thereafter on 23.10.2005 he meet his community leader, and on his advice, the complaint was written and P.W.1 put thumb impression in the complaint and then he lodged the complaint[Ex.P1]. In his evidence, P.W.1 has stated that he was not aware of the contents of the complaint. P.W.2 is a Doctor, working in the Government Hospital, Tindivanam. He has given treatment to P.W.1. According to him, on 21.10.2005 at about 5.00 p.m., P.W.1 came to the Hospital and told him that one known person attacked him with wooden log, and treated him as an out patient, and he has

issued a Accident Register [Ex.P2]. P.W.3 is the wife of P.W.1, and she is an eye witness to the occurrence. P.W.4 is a villager and he is also an eye witness to the occurrence. P.W.5 is the witness to the observation mahazar. P.W.6 is working as Tahsildar. He has given community certificate to the accused and stated that the accused belongs to the Backward Class community. P.W.7 is the Inspector of Police attached to the respondent police station. According to him, on receipt of the complaint from P.W.1, registered a case, prepared an observation mahazar and sent the same to the Judicial Magistrate and copies of the same to the higher officials. P.W.8 is the Deputy Superintendent of Police, Villupuram. He stated that on receipt of the first information report, commenced investigation, prepared observation mahazar and rough sketch, obtained community certificate of the accused and P.W.1, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet. P.W.9 is the Revenue Divisional Officer, Villupuram. He issued community certificate to P.W.1 stated that he belongs to Schedule Caste Irular community.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court, with this appeal.

7. I have heard Mr.A.B.Ashok, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the records carefully.

8. According to the prosecution, the occurrence said to have taken place on 21.10.2005 at about 3.00 p.m., while P.W.1 and others sitting near his house, the accused came there and demanded money from P.W.1, when he sought time to repay the said amount, the accused kicked him on his face and caused injuries, at that time P.Ws.3 and 4 were there. Immediately, he went to the Hospital, where, P.W.2 the Doctor has treated him as an out patient and accident register was issued to that effect. In the accident register, it has been stated that a known person assaulted him and the opinion of the Doctor is that the injuries are simple in nature. Thereafter, P.W.1 kept quite and only on 23.10.2005, he

consulted his community leader and there was a deliberation. According to him, the community leader himself wrote a complaint and P.W.1 only put his thumb impression in the complaint and then he lodged a complaint before the respondent police station. P.W.1 himself admitted in his cross examination, he does not know the contents of the complaint. P.W.3 is the wife of P.W.1. She stated that the community leader has prepared the complaint and gave it to them and asked them to lodge it before the respondent police. P.W.4 is also confirmed the same and says that the community leader has written the complaint. From their evidence, it could be seen that the complaint was prepared only by a community leader and he was not examined by the prosecution, and even P.W.1 says that he does not know the contents in the complaint, the complaint was filed two days after the occurrence and the delay in filing the complaint was also not explained by the prosecution. It is create a doubt about the prosecution case.

9. Apart from that so far as the offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, there are lot of contradiction between the evidence of eye witnesses. All the eye witnesses have stated different version regarding the actual word uttered by the accused at the time of occurrence. Apart from that they have kept

quite for two days, and only at the instigation of a community leader, they lodged a complaint before the respondent police station. It is also creates a doubt in the truthfulness of the prosecution case. In the above circumstances, in the absence of any other independence witness to corroborate the evidence of eye witnesses, it is highly unsafe to convict the appellant based on the interested testimony of P.Ws.1 and 3, and I am of the considered view that the prosecution has failed to prove the case beyond any reasonable doubt. Hence, the appellant is entitled for acquittal.

9. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused in S.C.No.144 of 2006 dated 07.09.2009, on the file of the learned Principal Sessions Judge, (Special Court), Villupuram, is set aside and the appellant/accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amount paid by him is ordered to be refunded forthwith.

17.02.2017

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To

- 1.The Principal Sessions Judge,
Special Court, Villupuram.
- 2.The Deputy Superintendent of Police,
Villupuram Sub Division,
Villupuram.
- 3.The Public Prosecutor,
High Court, Madras.



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V.BHARATHIDASAN.J.,

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