

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.01.2017

CORAM:

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

Crl.A.No.279 of 2008

M.Munusamy

... Appellant

vs.

State,by
Deputy Superintendent of Police,
Bhavani,
Ammapettai Police Station,
Ammapettai, Erode District.
(Crime No.290 of 2007)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 03.04.2008 passed by the learned
Principal District and Sessions Judge, Erode, in Spl.S.C.No.133 of
2007.

For Appellants : Mr.E.Vijayanand

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

JUDGMENT

The sole accused in Spl. Sessions Case No.133 of 2007 on
the file of the learned Principal District and Sessions Judge, Erode, is
appellant herein. He stood charged for the offence under Section
3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of

Atrocities) Act, 1989 and Section 352 of IPC. The trial Court, after trial, by Judgment dated 03.04.2008, convicted the appellant/accused under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced him to undergo six months simple imprisonment and imposed a fine of Rs.5,000/- in default to undergo simple imprisonment for two months and convicted the appellant under Section 352 IPC and sentenced him with a fine of Rs.500/- in default to undergo one month simple imprisonment. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

(i) P.W.1 is a student studying in one Jaya Shanthi Teacher Training Institute for which the appellant/accused is Correspondent. P.W.1 has paid the entire college fees and also the examination fees. The Institute got approval only for 50 students, but admitted students more than the approved strength. Hence, the petitioner was not issued with hall ticket and he could not write examination. When he questioned the accused, he informed him that the Institute got permission only for 50 students, so P.W.1 cannot write examination. Thereafter, P.W.1 has given a complaint before the police and a writ petition was also filed before this Court.

Thereafter, he continued to attend the class. On 11.07.2007 at about 6.00 p.m., P.Ws.1,2 and 3 have going to Ammapettai from College by walking. At that time, the appellant/accused came in the opposite direction in a car and stopped the car to answer the nature's call, on seeing the appellant/accused, P.Ws.1, 2 and 3 are requested him to permit them to write examination. But, the accused refused. Then, P.Ws.1 to 3 demanded him to return the money, but he refused and hence, the accused abused P.W.1 calling him by his caste name and attacked him in his left cheek. Immediately, P.W.1 went to the respondent police station and filed a complaint.

(ii) P.W.8, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.290 of 2007, for the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989, prepared First Information Report[Ex.P5], sent the same to the Deputy Superintendent of Police, for further investigation.

(iii) P.W.9, the Deputy Superintendent of Police, working in the respondent police station, on receipt of the First Information Report, commenced the investigation, proceeded to the scene of occurrence, prepared Observation Mahazar[Ex.P2], Rough Sketch[Ex.P6], examined the witnesses and recorded their

accused and remanded him to judicial custody. Thereafter, P.W.9 obtained a community certificate of P.W.1 and the accused. He examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet before the jurisdictional Judicial Magistrate Court.

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 the case of prosecution, as many as 9 witnesses were examined and 7 documents were marked.

4. Out of the said witnesses examined, P.W.1 is the defacto complainant in this case. According to him, he was studying teacher training course in the accused Teacher Training Institute and he paid the entire college fees and also the exam fees. But, he was not permitted to write the examination. When he questioned the accused, he informed him that the Institute got permission only for 50 students, but the accused admitted 102 students, and only 50 students could be permitted to writ the examination. Thereafter, he continued to attend the class. On 11.07.2007 at about 6.00 p.m., when P.Ws.1,2 and 3 were going to Ammapettai from College by walking, the accused came in the opposite direction in a car. At that time, P.W.1 questioned the accused to permit him to writ

examination. But, he refused. Then, P.W.1 demanded money from the accused, but the accused abused him by calling him in his caste name and attacked on his left cheek. Thereafter, he filed a complaint against him. P.W.2, the another student studying in the same Institute. According to him, at the time of occurrence, he along with P.Ws.1 and 3 were coming back from the Institute, at that time, a car belonging to the accused was parked near one S.P Gounder Murugesan Garden. P.W.1 requested the accused to permit him to write examination. When he refused, P.W.1 demanded him to return the money and Transfer Certificate. At that time, the accused scolded him and called his caste name and beaten him on his cheek. P.W.3 is another student studying in the same Institute. He also went along with P.Ws.1 and 2 at the time of occurrence. He reiterated the occurrence as stated by P.Ws.1 and 2. P.W.4 is witness to the observation mahazar. P.W.5 is also another witness to the observation mahazar and rough sketch. P.W.6, the Deputy Tahsildar, has given community certificate for accused. P.W.7, the Tahsildar, Uthankarai Taluk, has given community certificate for P.W.1. P.W.8, the Sub Inspector of Police, working in the respondent police station. According to him, on receipt of the complaint from P.W.1, registered the case, prepared first information report and sent the same to the higher officials. P.W.9, the Deputy Superintendent of Police, on receipt of the first

information report, commenced the investigation, arrested the accused, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

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 witnesses nor marked any documents.

6. Having considered all the above, the Trial Court convicted 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.E.Vijayanand, the learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

8. The occurrence taken place on 11.07.2007 at about 6.00 p.m. According to P.W.1, after closing the Institute, all the three witnesses went to Guruvareddyur, which is situated on the eastern side of the college, which is 4 kilometres away from the

college. Thereafter, from Guruvareddyur, they were going to Ammapettai by walk, which is 8 kilometres away from the Institute. At that time, the accused came in the opposite direction in a car and parked the car near one S.P. Gounder Murugesan Garden to answer his nature's call, where P.W.1 requested the accused to permit him to write examination, he refused the same. Thereafter, he demanded him to refund the entire money and transfer certificate, but the accused abused him with caste name and slapped him. P.W.2 is another student studying in the same Institute. He is also went along with P.W.1. According to him, the accused did not permit them to write examination and they have grievance against the management of Institute and on the date of occurrence, they were coming back from Guruvareddyur, the occurrence taken place near one S.P. Gounder Murugesan Garden. According to him, there is no other residential house is available near the scene of occurrence. P.W.3 is also another students studying in the same Institute. He also accompanied P.W.1 and he is also an eye witness to the occurrence. According to him, at the time of occurrence, P.Ws.1 and 2 and number of students studying in the college walking along with them. It is the consistent evidence of all the three witnesses that after college is over, all of them went to Guruvareddyur by walking, from there they are all returning back to Ammapettai. According to P.W.3, there are number of other

students were also walking along with them at the time of occurrence. But, none of the other students were examined by the prosecution.

9. Now, the question is whether the prosecution has proved the guilt of the appellant beyond any reasonable doubt?. Section 3(1)(x) of SC/ST Act is as follows:-

"Intentionally insults or intimidates with intend or humiliate a member of a Schedule Caste or Schedule Tribe in any place within public view"

10. The learned counsel appearing for the appellant would contend that no offence under section 3(1)(x) of SC/ST Act is made out against the appellant, as the alleged occurrence did not take place "within public view". To bring home the offence under Section 3(1)(x) of SC/ST Act, the prosecution has to establish that the accused intentionally insults or intimidated with intend to humiliate P.W.1 in a place within public view. The word "within public view" has been considered by the Hon'ble Supreme Court and this Honourable Court. The Hon'ble Supreme Court has held that "within public view" means that the public must view that the person being insulted, not linked with the complainant through any close

relationship, or any vested interest and who are not participatory members with him.

11. But in the instant case, absolutely there is no evidence that the appellant has been insulted within public view. P.Ws.2 and 3 was accompanied P.W.1 at the time of occurrence and they cannot be considered as independent member of public so as to fall within the meaning of Section 3(1)(x) of the Act as they are studying in the same college and they are also having grievance against the accused and they are linked with P.W.1. Hence, in my considered view that the prosecution has not proved the ingredients for the offence under Section 3(1)(x) of the ST/ST Act.

12. So far as the offence under Section 352 IPC is concerned, except the evidence of P.Ws.1,2 and 3, who are all interested witnesses, no other evidence is available to prove the same. In the above circumstances, it is highly unsafe to convict the accused based on the interested testimony of P.Ws.1 to 3. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt and hence the appellant is entitled for acquittal.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.133 of 2007 dated 03.04.2008 on the file of the learned Principal District and Sessions Judge, Erode 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 amounts paid by him is ordered to be refunded forthwith.

10.01.2017

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To

1.The Principal District and Sessions Judge,
Erode.

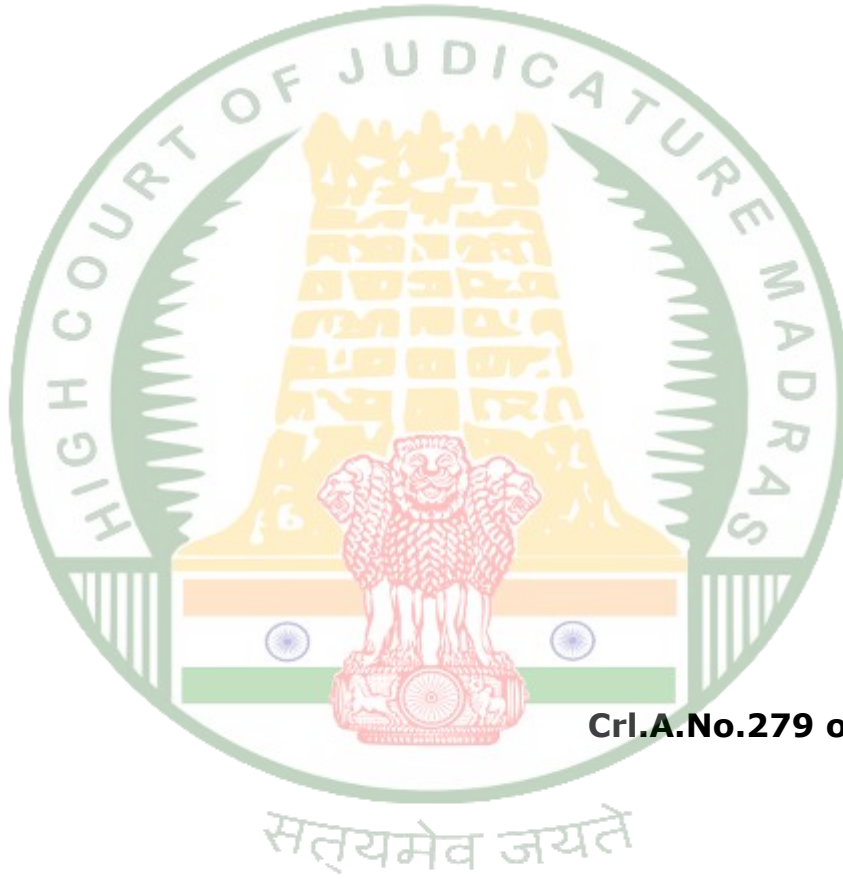
1.The Deputy Superintendent of Police,
Bhavani, Ammapettai Police Station,
Ammapettai, Erode District.

3.The Public Prosecutor,
High Court, Madras.

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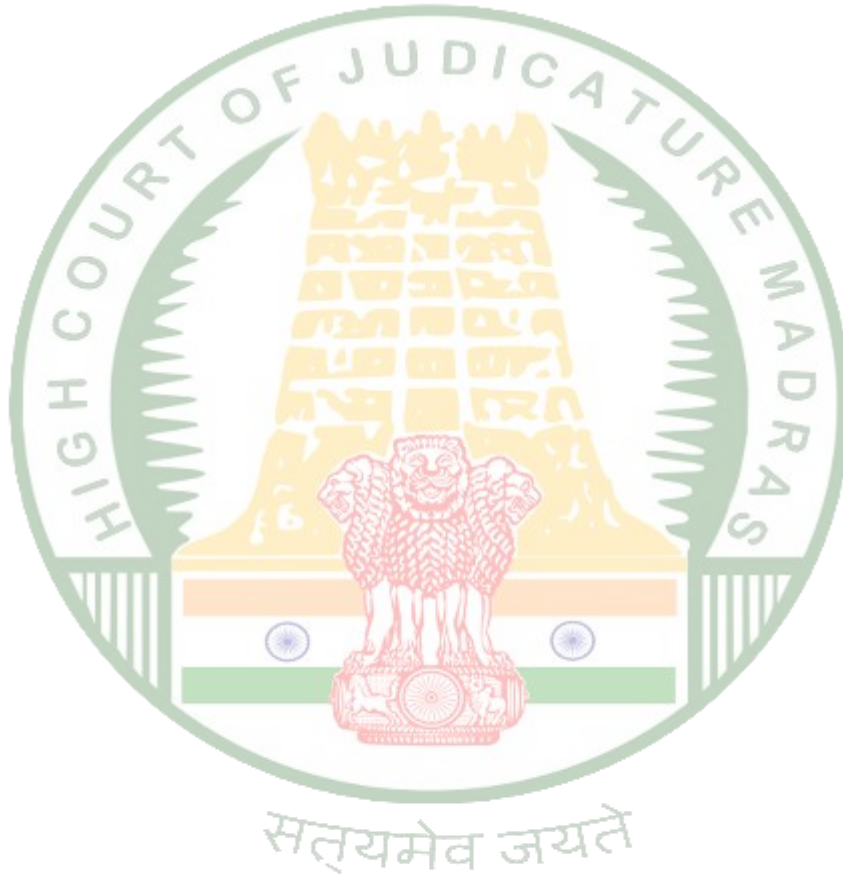
V.BHARATHIDASAN.J.,

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