

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.724 of 2008

M.Selvaraj ... Appellant/Accused

Vs

State by

The Deputy Superintendent of Police,
Kudimangalam Police Station,
Udumalpet.

(Crime No.346 of 2007)

... Respondent/Complaint

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgment dated 24.09.2008 passed by the learned
Principal Sessions Judge/Special Court, Coimbatore, in
Spl.S.C.No.18 of 2008.

For Appellant : Ms.D.Preetha

For Respondent : Mrs. M.F.Shabana,
Govt. Advocate (Criminal)

JUDGEMENT

The sole accused, in Special Sessions Case No.18 of 2008,
on the file of the learned Principal Sessions Judge/Special
Court, Coimbatore, is appellant herein. He stood charged for the
offence under Section 3(1)(x) of SC/ST (PA) Act, 1989. The
Trial Court, after trial, by Judgment dated 24.09.2008,
convicted the accused under Section 3(1)(x) of SC/ST(PA)
Act,1989 and sentenced him to undergo six months rigorous
imprisonment and imposed a fine of Rs.1000/- in default to
undergo rigorous imprisonment for two months. Challenging the
above said conviction and sentence, the appellant/accused is
before this Court with this Criminal Appeal.

2. When the matter is taken up for hearing on 15.02.2017,
the learned counsel appearing for the appellant reported no
instruction and filed a memo to withdraw his appearance. Hence,
this Court appointed Ms.D.Preethi, as the Legal Aid Counsel, for
the appellant.

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

P.Ws.1,4 and 5 are belongs to a scheduled caste "Chakkiliar" community and they are all agriculture coolies. On 20.12.2007, P.W.8 who has also belongs to the schedule caste "Chakkiliar" community, engaged P.Ws.1, 4 and 5 for an agricultural work to drain the stagnated water in his land. When they are draining the water, the appellant, who is the neighboring land owner, questioned them as the drained water flooded in his land and scolded them with filthy language and abused them by calling their caste name. Then, P.W.1 with the help of one of his community leaders, lodged a complaint before the respondent police station.

(ii) P.W.7, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.346 of 2007, for the offence under Section 3(i)(x) of SC & ST (PA) Act,1989 and prepared a first information report[Ex.P5] and sent the same to the Judicial Magistrate Court and copies of the same to the Deputy Superintendent of Police, Udumalpet.

(iii) P.W.9, the Deputy Superintendent of Police, Udumalpet, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P4], and a rough sketch [Ex.P6] in the presence of witnesses. Subsequently, he arrested the accused and remanded him to judicial custody. Thereafter, he obtained community certificate for the accused and P.W.1, he examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

4. Based on the above material, the trial Court, framed charges as mentioned in paragraph one of the judgment and the accused denied the same. In order to prove the case, prosecution examined as many as 9 witnesses and exhibited 6 documents.

5. Out of the said witnesses examined, P.W.1 is the defacto complainant in this case. According to him, he along with P.Ws.4 and 5, went for the agricultural work in the land owned by P.W.8. They are all belongs to the Schedule Caste Chakkiliar Community. When they are draining the water, the appellant/accused, who is the neighboring land owner, questioned them why they are draining the water in to his land, and prevented them from discharging their duties, and scolded them with filthy language, and calling them by their caste name. Then, he lodged a complaint before the respondent police station. P.W.2 working as Tahsildar at Udumalpet, given community certificate for P.W.1 stating that P.W.1 belongs to Schedule Caste. P.W.3 is the another Tahsildar, he has given community certificate for the accused, as he belongs to "Kongu

Vellalar" a Backward class community. P.Ws.4 and 5 are eye witness to the occurrence. They along with P.W.1 went, to P.W.8's land for agriculture work. Both of them belongs to schedule caste community, they have spoke about the occurrence. P.W.6 is witness to the observation mahazar, P.W.7 is the Sub Inspector of Police, working in the respondent police station. On receipt of the complaint from P.W.1, registered a case, prepared a first information report and sent the same to the higher officials. P.W.8 is the owner of the agricultural land, who engaged P.Ws.1,4 and 5 for agricultural work and he also belongs to the schedule caste "Chakkiliar" Community. According to him, since the water has stagnated in his land, he engaged P.Ws.1, 4 and 5 for draining the water. At that time, the accused, who is the owner of neighboring land prevented them and abused them by calling their caste name. P.W.9 is the Deputy Superintendent of Police, working in the respondent Police Station. On receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar, rough sketch, arrested the accused and remanded him to judicial custody, examined the witnesses, recorded their statements and after completion of investigation, he laid charge sheet.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he examined one Muthusamy as D.W.1 and also marked the first information report filed by him against P.W.1 and others as Ex.D1. D.W.1 is the brother of appellant/accused. According to him, the defacto complainant and others quarreled with the accused and the accused has also given complaint against the defacto complainant and others, which was registered as Crime No.347 of 2007, and the same was marked as Ex.D1.

7. Having considered all the above materials, the trial Court convicted and sentenced the accused as detailed in the first paragraph of this judgment. Challenging the above said conviction and sentence, the appellant/accused preferred the present Criminal Appeal.

8. I have heard Ms.D.Preethi, learned Legal Aid Counsel appearing for the appellant and Mr.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the records carefully.

9. There are four eye witnesses to the occurrence, namely, P.Ws.1,4,5 and 8 and they belongs to the Scheduled Caste "Chakkiliar" community. According to P.W.1, P.W.8 engaged P.Ws.1, 4 and 5 for draining the water from his land, at that time, the accused, belongs to Kongu Vellalar, a Backward Class Community, prevented them for draining the water in to his land and abused them with filthy language, insulted them by calling

their caste name, immediately, P.W.1 consulted one Paravel, who is the leader of one Puratchi Puligal Association, belongs to his community, thereafter they have lodged a complaint before the respondent police. From their evidence, it could be seen that at the time of occurrence, except the above four persons, no other persons were present in the scene of occurrence.

10. To bring home an offence under Section 3(1)(x), of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Prosecution should prove the following ingredients:-

(1) The affected person should be a member of a Scheduled Caste or a Scheduled Tribe;

(2) the offender should not be a member of a Scheduled Caste or a Scheduled Tribe;

(3) there must be an intentional insult or intimidation with intent to humiliate a member of a Scheduled Caste and Scheduled Tribe; and

(4) such insult or intimidation should have been made in any place within the public view.

11. Even though, the first two ingredients were proved by the prosecution and the 3rd and 4th ingredients were not proved by the prosecution. From the evidence of P.W.1 and other eye witnesses it could be seen that, apart from the victims of the alleged insult or intimidation, and the person who said to have caused such intimidation or insult, no other person witnessed the occurrence to show that the insult or intimidation was committed within the public view. Apart from that, as per the evidence of P.W.1, the occurrence took place at about 2.30 p.m., and thereafter, they have consulted with one of the community leaders and there was a deliberation, and only on his advice, P.W.1 lodged a complaint at about 10.30 p.m., with a delay of more than eight hours and there is no proper explanation by the prosecution for the delay. In the meantime, it could also be seen that the accused brother D.W.1 also lodged a complaint against the defacto complainant and others on the ground that they have abused them with filthy language and a crime was also registered against them. Apart from that it could be seen that only after a deliberation, the present complaint was filed, it also creates a doubt about the prosecution case. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charge against the accused beyond any reasonable doubt. Hence, the accused is entitled for acquittal.

12. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused in Spl.S.C.No.18 of 2008 dated 24.09.2008, on the file of the learned Principal Sessions Judge, (Special Court), Coimbatore, is set aside and the appellant/accused is acquitted from the charge leveled 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.

13. While parting with the case, this Court appreciates the services rendered by Ms.D.Preethi, Advocate, who appeared on behalf of the appellant/accused as Legal Aid Counsel. The Tamil Nadu State Legal Aid Services Authority is directed to pay her remuneration as per rule.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Special Court, Coimbatore.
 - 2.The Deputy Superintendent of Police,
Kudimangalam Police Station,
Udumalpet.
 - 3.The Judicial Magistrate, No.II, Udumalpet
 - 4.The Chief Judicial Magistrate, Coimbatore
[For information]
 - 5.The Public Prosecutor,
High Court, Madras.
 - 6.The Secretary,
Tamil Nadu State Legal Aid Services Authority
High court, Madras.
 - 7.The Section Officer,
Criminal Section, High court, Madras.
- +1 CC Mr.S.GUNALAN Advocate SR.No.11340
- EGR 14/11/2017

Cr1.A.No. 724 of 2008