

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2016

Pronounced on : 06.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.803 of 2008

Ravi @ Padmanabhan

..

Appellant

VS

State rep. By
Deputy Superintendent of Police,
Palladam Range,
Kamanaicken Palayam Police Station,
Kamanaicken Palayam,
Palladam,
Coimbatore District,
Crime No.392 of 2007

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Special Judge cum Principal Sessions Judge, Coimbatore in S.C.No.19 of 2008 dated 24.10.2008.

For Appellant : Mr.C.D.Johnson
for Mrs.Greetha Senthilkumar

For Respondent : Mrs.M.f.Shabana
Govt. Adv. (Crl. Side)

JUDGEMENT

The sole accused in S.C.No.19 of 2008 is the appellant herein. He stood charged for the offences under Sections 341, 323 & 506(i) IPC and Section 3(1)(x) of SC/ST Prevention of Atrocities Act. By judgment dated 24.10.2008, the trial Court convicted the appellant under Section 341 IPC and sentenced him to undergo rigorous imprisonment for one month, convicted and sentenced him to undergo rigorous imprisonment for 3 months for the offence under Section 323 IPC, and convicted

him under Section 3(1)(x) of SC/ST Prevention of Atrocities Act and sentenced him to undergo rigorous imprisonment for 6 months and imposed a fine of Rs.1000/- in default to undergo rigorous imprisonment for one month. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

P.W.1 is the injured witness in this case. He was working as a waterman in the Kethanoor village panchayath and he belongs to schedule caste madhari community. On 17.09.2007, at about 5.00 to 5.30 p.m., while P.W.1 was going in his TVS 50, moped, to switch off the motor, the appellant/accused tried to stop the vehicle, but he did not stop. While he came back, the accused waylaid him and abused him by calling his caste name, slapped him on his face and pushed him down, thereafter, he also kicked him on his chest and caused injury. Then, P.W.1 was taken to Government Hospital, Palladam, where he suffered chest pain, hence, he was referred to Government Hospital, Coimbatore and he was admitted there.

3. P.W.9, Head Constable, working in the respondent police, on receipt of the memo from the Government Hospital, Palladam, went to Government Hospital, Coimbatore, where P.W.1 was admitted. On 18.09.2007, he obtained a statement from P.W.1 and based on the said statement, he registered a case in Crime No.392 of 2007, for the offence under Section 341, 323 and 506 (ii) IPC and Section 3(1)(X) of SC/ST Act and sent the First Information Report, Ex.P.6, to the Judicial Magistrate and to the higher officials.

4. On receipt of the First Information Report, P.W.10, Deputy Superintendent of Police, after obtaining permission from the Superintendent of Police, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.5 and drew rough sketch, Ex.P.8 in the presence of witnesses, he recorded the statement of P.W.1 in the Government Hospital, Coimbatore and also recorded the statement of other witnesses. Then he arrested the accused on 21.09.2007 and remanded him to judicial custody. Thereafter, he obtained a community certificate from the Tahsildar, and on completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 8 documents were exhibited.

6. Out of the said witnesses examined, P.W.1 is the injured witness. According to him, on the date of occurrence at about 5.30 p.m., when he came in his TVS 50, Moped, due to previous enmity, the appellant/accused waylaid him and slapped him on his face and pushed him down and also kicked him on his chest and also abused him by using his caste name. Thereafter, he was taken to Government Hospital, Palladam and where he was suffering a chest pain, and he was referred to Government Hospital, Coimbatore, where his statement was recorded by P.W.9. He took treatment in the hospital for 3 days and thereafter he was discharged from the hospital.

7. P.W.2 is a doctor, who examined P.W.1 in the Government Hospital, Palladam and he found a lacerated injury on the right hand of P.W.1. According to him, P.W.1 complained of pain in his chest. P.W.2 has given accident register, Ex.P.2. P.W.3 is a Tahsildar, who has given community certificate to P.W.1 and P.W.4, then Deputy Tahsildar, working in the Suloor, has given a community certificate for the appellant as he belong to Konguvellalan a backward class community. P.W.5 is another eye-witness to the occurrence, according to him, at the time of occurrence, the accused waylaid P.W.1 and abused him by using his community name and had beaten him. P.W.6 is a witness to the Observation Mahazar, Ex.P.5. P.W.7 is another eye-witness to the occurrence. According to him, at the time of occurrence, the accused abused P.W.1 by calling his community name and had beaten him. P.W.8 is an eye-witness to the occurrence. According to him, the accused waylaid P.W.1 and scolded him by calling his community name and had beaten him. P.W.9 is a Head Constable, who recorded the statement of P.W.1 and registered the case. P.W.10 is a Deputy Superintendent of Police, who conducted investigation and filed charge sheet in this case.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the appellant/accused 3 witnesses have been examined and 2 documents have been exhibited.

9. Out of the witnesses examined by the accused, D.W.1 is the wife of the accused. According to her, on 20.01.2007, there was a quarrel between the president of the village panchayath one Harigopal and the accused. The said Harigopal and his men caused damage to the tea shop of the accused and the accused gave a complaint before the Human Rights Commission and their family was also excommunicated by the above said Hari Gopal. Since the accused family was working in the election against the said Harigopal, at his instigation only, this complaint has been filed. On 17.09.2007, i.e., on the date of occurrence, his husband has also been beaten by his men and he was admitted in the hospital.

10. D.W.2 is a member in the Pokkalur Panchayat Union. According to him, in the month of January 2007, the accused was attacked by Harigopal and his men and the tea shop of the accused was damaged. He has also given a complaint in this regard. On the next day, in the panchayath, he was excommunicated from the village. Thereafter, the accused family left the village and living in some other village.

11. D.W.3 is another Villager. According to him, village president Harigopal lodged a false complaint against him and he was also acquitted in that case. Further according to D.W.3, at the instigation of the said Harigopal, the appellant/accused was attacked, and, he was ex-communicated, because of that, the accused left the village and living in other village. D.W.3 marked two documents. A copy of the First Information Report in Crime No.393 of 2007 filed against P.W.1 and two others stating that on 17.09.2007, at about 7.00 p.m., P.W.1 other people attacked him and injured the accused and the accused was admitted in the Palladam Government Hospital and he was referred to Government Hospital, Coimbatore where his statement was obtained by the police and a crime was registered.

12. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

13. We have heard Mr. C.D.Johnson, learned counsel appearing for the appellant and Mr. M.F.Shabana, Government Advocate (Crl. Side) appearing for the State and we have also perused the records carefully.

14. The learned counsel appearing for the appellant would contend that there is a case in counter and the appellant was also attacked by P.W.1 and the appellant/accused suffered injury and taken to the Government Hospital, Palladam. From there, he was referred to Government Hospital, Coimbatore and admitted there, where his statement was recorded by the Head Constable in the respondent police on 18.09.2007, based on the said statement, a crime was also registered in Crime No.393 of 2007 for the offences under Sections 324 and 506(ii) IPC against P.W.1 and others. But, no investigation was conducted by the prosecution in respect of the said case. P.W.10, the Deputy Superintendent of Police, also admitted in his cross examination that he is aware of the complaint given by the appellant/accused. In the above circumstances, the prosecution totally suppressed the above complaint, thereby the origin and genuineness of the case has been suppressed by the prosecution.

Apart from that there is previous enmity between the petitioner and the local village president and he was excommunicated , which was also confirmed by the evidence of D.Ws.1 to 3. Only at his instigation, a false complaint has been filed against the petitioner through his men, P.W.1. Other two eyewitnesses are also supporters of the president. Only on their instigation, the present complaint has been given. Hence, he sought for acquittal.

15. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent would submit that apart from the injured witness, there are two eye-witnesses. They have categorically stated about the occurrence. There is no reason to disbelieve the evidence of injured witness and the prosecution proved the case beyond reasonable doubt and sought for dismissal of the case.

16. I have heard the rival submissions.

17. As rightly pointed out by the learned counsel for the appellant, there is a counter case given by the appellant/accused, which was also registered in the same police station in Crime No.393 of 2007 against P.W.1 and two others for the offences under Sections 324, 506(ii) IPC and the First Information Report has also been marked as Ex.D.1. As per the above complaint, at the very same time, the appellant/accused was also attacked by P.W.1 and two others and the appellant was taken to Government Hospital, Palladam and from there, he was referred to Government Hospital, Coimbatore, where his statement was recorded by the Head Constable of the respondent police and based on the said statement a crime was also registered. But, there is no investigation on the above complaint and there is no mentioning about the said complaint and the same has been suppressed by the prosecution. P.W.10, the Deputy Superintendent of Police has also admitted in the cross examination that he has knowledge about the said complaint. From the above circumstances, it could be clear that the prosecution has suppressed the origin and genuineness of the case.

18. Apart from that the appellant has also established the fact that there is a previous enmity between the petitioner and the village president and he was also excommunicated and he already left the village and running a tea shop in another village. In the above circumstances, the prosecution has suppressed the very origin and genuineness of the case and did not come out with the true facts of the case and not proved the case beyond reasonable doubt. Hence, the appellant/accused is entitled for acquittal.

19. In the result, the Criminal Appeal is allowed and the

conviction and sentence imposed on the appellant/accused by the learned Special Judge cum Principal Sessions Judge, Coimbatore in S.C.No.19 of 2008 by the judgment dated 24.10.2008., is hereby set aside. The appellant/accused is acquitted of the charges levelled against him. Fine amount, if any paid by the appellant, shall be refunded to him. Bail bonds, if any, executed by the appellant shall stand discharged.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

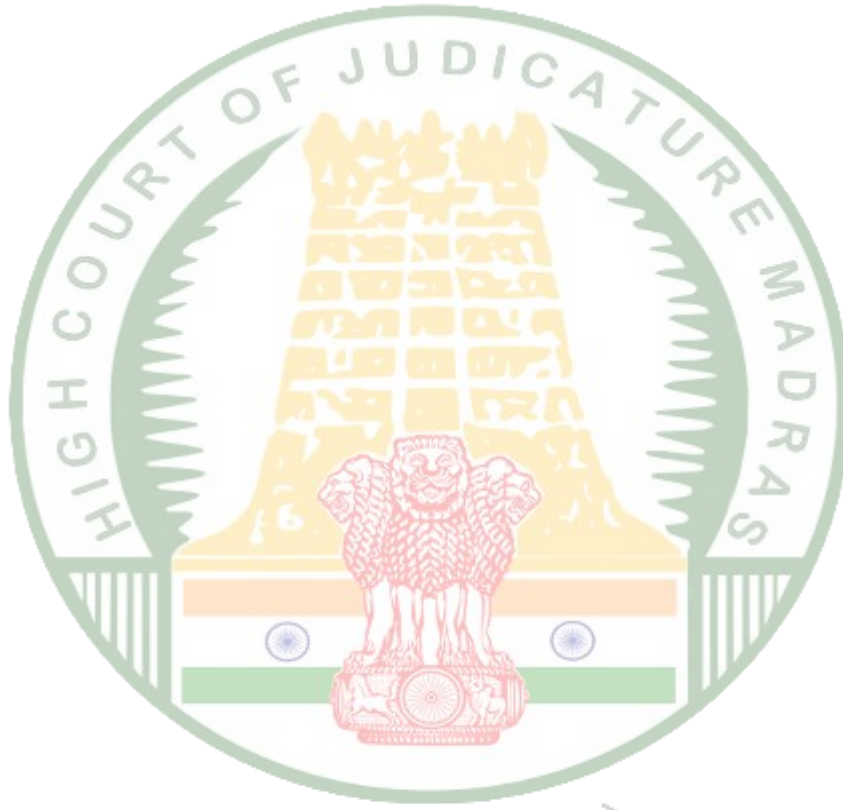
- 1.The Judicial Magistrate,
Palladam.
- 2.-do- Thro The Chief Judicial Magistrate,
Coimbatore.
- 3.The learned Special Judge,
cum Principal Sessions Judge,
Coimbatore.
4. The Deputy Superintendent of Police,
Palladam.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr. C.D. Johnson, Advocate SR.1420

NM(Co)
Vr(20/01/2017)

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