

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.10.2017

PRONOUNCED ON : 11.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.7 of 2013

1.Kannan
2.Arivazhagan
3.Bakkiyaraj

... Appellants

Vs.

State rep by
The Deputy Superintendent of Police
Kallakurichi Sub-Division
Villupuram District
Crime No.487 of 2009.

... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C. to set aside the order of the trial Court, the learned Special Judge (Principal Sessions Judge) Villupuram Sessions Division, Villupuram dated 21.12.2012 in S.C.No.144 of 2010.

For Appellants : Mr.D.Jaganathan
For Respondent : Mr.K.Madhan
Govt.Advocate (crl.side)

J U D G M E N T

This appeal has been filed against the sentence and order dated 21.12.2012

<http://www.judis.pjc.in> passed in S.C.No.144 of 2010 by the learned Special Judge (Principal Sessions

Judge) Villupuram Sessions Division, Villupuram.

2. It is the case of the prosecution that on 14.06.2009 around 19 hours, at Puthandhur Village, Ramasamy [P.W.1] belonging to Hindu Adi Dravida Community went to collect fodder from the straw that was kept spread by him in the land adjacent to his house and at that time, he ran over a thorn, for which, he was muttering some words cursing himself. At that time, Kannan [A1] who was coming in the opposite direction is said to have questioned Ramasamy [P.W.1] thinking that the latter was abusing him. It is further alleged that Kannan [A1] abused Ramasamy [P.W.1] by calling him by his caste name and further held him by his neck and caused simple injury. On seeing this, Arivazhagan [A2], the son-in-law of Kannan [A1] joined the fray and hit Ramasamy [P.W.1] on his back. When Anjalai [P.W.2], wife of Ramasamy [P.W.1], came to rescue her husband, Backiyaraj [A3] is said to have abused her and kicked her on her abdomen and further threatened and intimidated the couple that they should not allow their cattle to graze in others' fields.

[a] On the next day, i.e. on 15.06.2009, Ramasamy [P.W.1] and his wife Anjalai [P.W.2] went to the Government Hospital, Kallakurichi around 11.15 a.m. and got themselves admitted in the hospital. On intimation received by the police from the hospital, Head Constable 1493 went to the hospital and recorded the statement of Ramasamy [P.W.1], which was treated as complaint [Ex.P.1], based on which, Rubi Devasagaya Rani [P.W.7], Sub-Inspector of Police, registered a case

in Cr.No.487 of 2009 under Sections 294(b), 323, 355 and 506(ii) IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as "the SC/ST Act"] and filed an FIR [Ex.P.10] against Kannan [A1], Arivazhagan [A2] and Backiyaraj [A3].

[b] Investigation of the case was taken over by Arumugam, Deputy Superintendent of Police, who went to the place of occurrence and prepared the Rough Sketch [Ex.P.12] and collected the Community Certificates [Ex.Ps.5 to 9 respectively] of Ramasamy [P.W.1], Anjalai [P.W.2], Kannan [A1], Arivazhagan [A2] and Backiyaraj [A3] from Kannaiyan [P.W.6] Tahsildar, Sankarapuram. He also recorded the statement of Dr.Manimala [P.W.5] who gave treatment to Ramasamy [P.W.1] and Anjalai [P.W.2] and obtained copy of the Accident Registers, viz., Ex.P.3 relating to Anajalai [P.W.2] and Ex.P.4 relating to Ramasamy [P.W.1]. After completing the investigation, he filed charge sheet before the competent Court. On the appearance of the accused, they were furnished with the documents and the following charges were framed.

- WEB COPY
- A1 Sections 323, 506(i) IPC and Section 3(1)(x) of the SC/ST Act
 - A2 Sections 323, 506(i) IPC and Section 3(1)(x) of the SC/ST Act
 - A3 Sections 355, 506(i) IPC and Section 3(1)(x) of the SC/ST Act

[c] When questioned, the accused pleaded 'not guilty'. To prove the

case, the prosecution examined eight witnesses and marked twelve exhibits. The accused were questioned under Section 313 Cr.P.C. about the incriminating circumstances, which they denied. No witness was examined on behalf of the accused nor any document marked.

[d] After analysing the evidence adduced by the prosecution and hearing the arguments on either side, the trial Court, by judgment dated 21.12.2012, convicted and sentenced the accused as follows:

"1st accused is found guilty u/s 323 IPC and 3(1)(x) of S.C./S.T. Act and is convicted and sentenced to undergo S.I. for 6 months and to pay a fine of Rs.500/- for the offence u/s 323 IPC and in default to undergo further S.I. for 2 months and to undergo S.I. for 6 months & to pay a fine of Rs.500/- for the offence u/s 3(1)(x) of S.C./S.T. Act in default to undergo further S.I. for 2 months.

2nd accused is found guilty u/s 323 IPC and 3(1)(x) of S.C./S.T. Act and is convicted and sentenced to undergo S.I. for 6 months and to pay a fine of Rs.500/- for the offence u/s 323 IPC and in default to undergo further S.I. for 2 months and to undergo S.I. for 6 months and to pay a fine of Rs.500/- for the offence u/s 3(1)(x) of S.C./S.T. Act and in default to undergo further S.I. for 2 months.

3rd accused is found guilty u/s 355 IPC and 3(1)(x) of S.C./S.T. Act and is convicted and sentenced to undergo S.I. for 1 year and to pay a fine of Rs.500/- for the offence u/s 355 IPC and in default to undergo further S.I. for 2 months and to undergo S.I. for 6 months and to pay a fine of Rs.500/- for the offence u/s 3(1)(x) of S.C./S.T. Act and in default to undergo further S.I. for 2 months. The set off is allowed u/s 428 Cr.P.C. The substantive sentences shall run concurrently."

[e] Challenging the said conviction and sentence, the accused are before this Court.

3. Heard the learned counsel for the accused and the learned Government Advocate [Crl.side] appearing for the State.

4. Learned counsel for the accused submitted that even according to the prosecution witnesses, there was prior enmity between the family of Ramasamy [P.W.1] and Kannan [A1], on account of which, a case has been foisted against the accused. He further submitted that the prosecution had failed to prove the place where the alleged incident had taken place, as there are contradictions in this regard in the evidence of the prosecution witnesses themselves. He also submitted that, for the incident that is said to have taken place on 14.06.2009, Ramasamy [P.W.1] and Anjalai [P.W.2] had not lodged any police complaint immediately, but had got themselves admitted in the hospital only on the next day and thereafter, the FIR was registered, which shows that they have deliberately foisted a case against the family of the accused.

5. Per contra, learned Government Advocate (Crl.Side) refuted the allegations.

6. This Court gave its anxious consideration to the rival submissions.

7. In this case, the prosecution have satisfactorily established through the evidence of Kannaiyan [P.W.6] and through the Community Certificates [Exs.P.5

and 6] that Ramasamy [P.W.1] and Anjalai [P.W.2] belong to the Adi Dravida Community. Similarly, the prosecution have also established that the accused belong to non-Adi Dravida Community. Ramasamy [P.W.1], in his evidence, has stated that while he was going to collect fodder, he ran over a thorn and was muttering something, which was mistaken by the accused, who picked up a quarrel and abused Ramasamy [P.W.1] by his caste name. Anjalai [P.W.2] also corroborated the evidence of her husband Ramasamy [P.W.1]. Both of them in their evidence have clearly stated that the said incident had taken place next to the residence of Kannan [A1] near a common road. However, Karuppan [P.W.3], who is said to be an eye witness, has, in his evidence, stated that the incident had taken place near the house of one Ayyakannu. The Rough Sketch [Ex.P.12] also shows that the place of occurrence was near Ayyakannu's house, whereas, Ramasamy [P.W.1] and Anjalai [P.W.2] have deposed that it had taken place near the house of Kannan [A1].

8. Ramasamy [P.W.1], in his cross-examination, has categorically admitted that there was previous enmity with the family of the accused in connection with the spreading of straw for drying in the nearby land. Of course, motive is a double-edged sword and it can go either side. However, in this case, the incident is said to have taken place on 14.06.2009, whereas, Ramasamy [P.W.1] and Anjalai [P.W.2] got admitted in the hospital on 15.06.2009 around 11 O'clock and only thereafter, the complaint was lodged. From the copy of the Accident Registers

[Exs.P.3 and 4], it is seen that there was no external injury found and in the evidence of Dr.Manimala [P.W.5] who treated Ramasamy [P.W.1] and Anjalai [P.W.2], it is seen that at the time of admission, Ramasamy [P.W.1] had told the Doctor that he was assaulted by four persons near his house, whereas in the Court, Ramasamy [P.W.1] has given evidence that three accused had assaulted him near Kannan's [A1] house. These contradictions, coupled with the evidence of the independent witness, Karuppan [P.W.3] who has stated that the incident had taken place near Ayyakannu's house, creates a reasonable doubt in the mind of this Court about the very occurrence.

In the result, the judgment of the trial Court in S.C.No.144 of 2010 dated 21.12.2012 by the learned Special Judge (Principal Sessions Judge) Villupuram Sessions Division, Villupuram is set aside and this appeal stands allowed.

11.12.2017

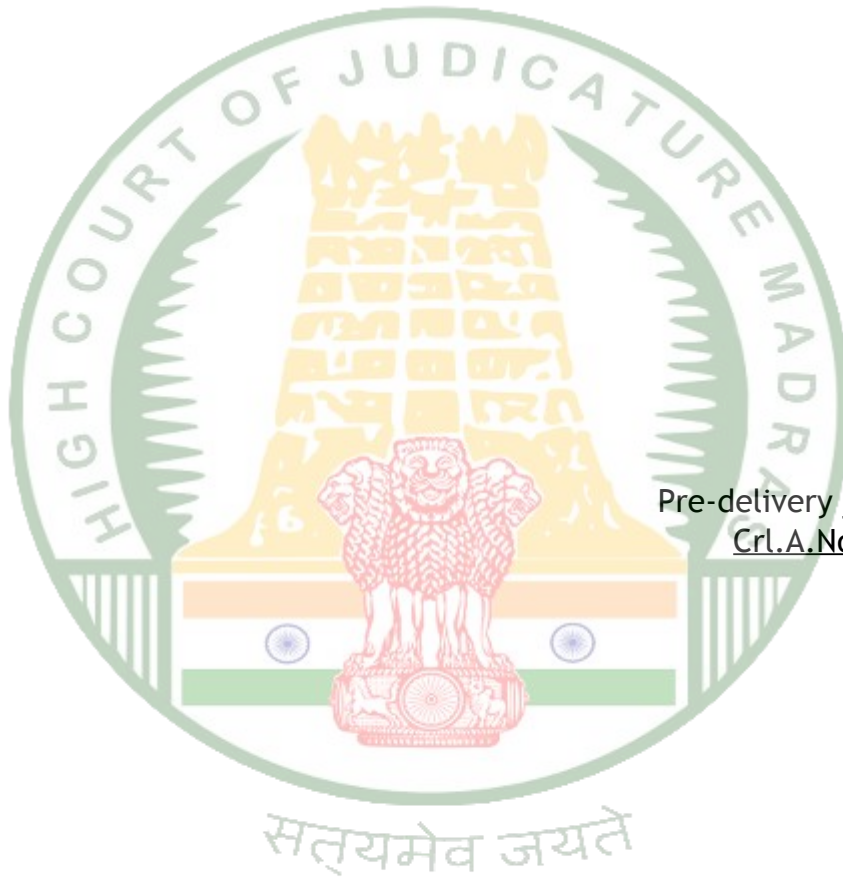
To

1.The Special Judge (Principal Sessions Judge)
Villupuram Sessions Division,
Villupuram.

2.The Deputy Superintendent of Police
Kallakurichi Sub-Division
Villupuram District

3.The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH, J.



Pre-delivery judgment in
Crl.A.No.7 of 2013

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