

IN THE HIGH COURT OF JUDICATURE AT MADRASDATED : **06.02.2018**

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THE HONOURABLE MR.JUSTICE P.KALAIYARASAN**Crl.A.No.585 of 2009**

Sundararajan

vs.

.. Appellant

The State of Tamil Nadu
Rep. by Deputy Superintendent of Police,
Periyathachoor Police Station
Villupuram District.

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 (2) Cr.P.C., to call for the records relating to the proceedings in S.C.No.175 of 2007 on the file of the Special Court (Principal Sessions Court), Villupuram and set aside the order of conviction, dated 14.09.2009 and set the appellant liberty.

For Appellant : Mr.M.Devaraj

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl. side)**JUDGMENT**

This Criminal Appeal has been filed against the conviction and sentence passed by the learned Principal District Court, Villupuram in its Judgment, dated 14.09.2009 in S.C.No.175 of 2007.

2. The case of the prosecution is that the accused beat P.W.3, Poongavanam with crowbar as he strayed his goats in the land of the accused at about 4 p.m on 02.12.2005 in V.Panchalam village. On hearing the same, his mother, P.W.1, Pachaiammal went to the scene of crime and pleaded the accused to leave the goat he took with him. The appellant / accused being caste Hindu abused her who belongs to Scheduled Tribe community by degrading her caste and beat her by pulling her saree and blouse. He also hit the goat on the floor, resulting to its death. P.W.1 along with his son and husband proceeded to the police station with the dead goat. At the bus stop, the appellant / accused with two persons snatched the dead goat from P.W.3. She went to the police station and lodged the complaint. Then she along with her son went to the hospital and took treatment. The case was registered and the Deputy Superintendent of Police investigated the case and laid charge sheet.

3. The Sessions Court framed charges and questioned the accused. Since he denied the charges, he was put on trial. After examination of witnesses, incriminating evidence was put to the appellant / accused under Section 313 (1) (b) Cr.P.C and he denied the same.

4. The trial Court after analysing the evidence acquitted the accused for offence under 323 IPC but convicted for the offence under Sections 324, 354 IPC and 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, resulting to undergo 2 years RI and to pay a fine of Rs.20,000/- in toto.

5. The learned counsel appearing for the appellant mainly argued that the trial Court without noticing the prior enmity between the parties, unexplained delay of 24 hours in lodging the complaint and suppression of the complaint given to the police, found the appellant / accused guilty and therefore, the appellant / accused is entitled to acquittal by giving benefit of doubt.

6. The learned Government Advocate argued that the trial Court after analysing the evidence has rightly found the appellant / accused guilty for the offences and the delay in FIR has been properly explained and therefore appeal is to be dismissed.

7. P.W.1 and P.W.3 are the injured witnesses. Their evidence cannot be brushed aside lightly unless there are sufficient strong reasons. Excepting the injured witnesses, one another eye witness has been examined as P.W.4 and she is admittedly close relative of the above injured witnesses.

8. The following reasons tilt the veracity and genuineness of the evidence of the above said eye witnesses :

(i) The complainant P.W.1 herself admits in her evidence that already there was enmity between her family and the accused in straying her goats into the land of the accused. She admits that they used to remove the fence and stray their goats into the land of the accused. Due to that enmity, her two sons were stopped from working in the land of the accused for coolie. Thus due to straying goats in the land of the accused, there was enmity between P.W.1 family members and the accused leading even to stop P.W.3 and his brother from coolie work in the accused land.

(ii) P.W.1 admits in her evidence that immediately after the occurrence she went to the police station and lodged the complaint and the police only sent her and her son to the hospital. She has categorically said that prior to giving the present complaint she gave a complaint to the police. The occurrence took place at 4 p.m on 02.12.2005. The complaint was given at 5.45 p.m on 03.12.2005 based on which the FIR was registered. Therefore there is delay of more than 24 hours in lodging the complaint. Though the

Doctor examined the injured at 8 p.m on the alleged date of occurrence there is delay of 24 hours in lodging the FIR and no explanation has been given for such a delay. As already pointed out, the complaint given to the police at the earliest point of time has also been suppressed.

(iii) In the compliant, it has been stated that when P.W.1 proceeded to the police station with dead goat, the same was snatched away from her in the bus stop by the accused along with two persons. When the dead goat was snatched away from P.W.1 in the bus stop, the prosecution has not established the above fact through any independent witness.

(iv) It is also pertinent to note that the blouse and saree which are alleged to have been torn away by the accused have not been seized and produced in the case.

9. Considering all the above aspects, this Court is of the view that it is not safe to base conviction on the guise of the evidence of P.W.1 and P.W.3 though they are injured. The appellant / accused is entitled to the benefit of doubt. Giving benefit of doubts, this Court acquit the appellant / accused.

P.KALAIYARASAN, J

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In fine, this Criminal Appeal is allowed and accordingly, the order of conviction and sentences imposed on the appellant, dated 14.09.2009 made in S.C.No.175 of 2007 on the file of the Special Court (Principal Sessions Court), Villupuram is set aside. The fine amount, if any paid by the appellant / accused shall be refunded to the appellant. The bail bond, if any, executed by the appellant/accused, shall stand cancelled.

06.02.2018

Index : Yes / No

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To

1. The Special Court
(Principal Sessions Court),
Villupuram.
2. The Deputy Superintendent of Police,
Periyathachoor Police Station
Villupuram District.
3. The Public Prosecutor
High Court of Madras.

Crl.A.No.585 of 2009