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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A.No.65 of 2010 and
M.P.No.1 of 2010

Mohan

.. Appellant /Accused

Vs.

State represented by
Deputy Superintendent of Police,
Dharmapuri.
(Cr.No.312/2008)
Krishnapuram Police Station)

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on him by the learned Principal Sessions Judge, Dharmapuri by Judgment dated 23.12.2009 in S.C.No.59 of 2009 and acquitted the appellant by allowing this appeal.

For Appellant : Mr.R.Thirunanam
for M/s.C.H.Pandian

For Respondent : Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

The present appeal has been filed challenging the judgment of the learned Principal Sessions Judge, Dharmapuri made in S.C.No.59 of 2009 whereby which the appellant/accused has been convicted under Section 323 IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused has been sentenced to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for 3 months for the offence under Section 323 IPC and sentenced to undergo Rigorous Imprisonment for two years and pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of 8 months for the offence under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2.The case of the prosecution is that PW1, Dheivam, was working as a Salesman in Wine Shop which belongs to the State Government and the accused had at that time, come to purchase



Alcohol bottle from the shop. When PW1 had demanded the amount, the accused had started scolding PW1 by using the words which directly refer to his cast and demeaned him and also assaulted him on his nose by using a chappal. PW1 sustained injuries and the accused had also closed the door of the shop and at that time, PW2, PW3, PW4 and PW5 and one Amavasai prevented the accused from further assaulting PW1 and thereafter, after consulting the higher authorities, PW1 has preferred a complaint at Krishnapuram Police Station on 07.06.2008. Based on the complaint, PW11, the Sub-Inspector of Police who was on Duty registered the case in Crime No.312/2008 at Krishnapuram Police Station for the offences punishable under Sections 294(b), 323, 355 of I.P.C. and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, he sent the complaint and the F.I.R. to the learned Judicial Magistrate Court and also gave a requisition letter to the Superintendent of Police for appointment of Investigation Officer in the case. PW12 who was working as Deputy Superintendent of Police was appointed as the Investigating Officer, rushed to scene of occurrence and prepared the Observation Mahazar in the presence of the witness and also prepared the rough sketch, and also examined the witnesses and recorded their statements.

3. On 08.06.2008, the accused was arrested and sent to judicial custody. As it was revealed that the offences involved were exclusively triable by the Court of Sessions and accordingly the case was committed to the Sessions Court. During trial, 12 witnesses were examined on the side of the prosecution and PW2 to PW5 turned hostile and they were declared as Hostile Witnesses by the prosecution. Apart from PW1 himself who happens to be the injured witness, there were no other independent witnesses available to support the case of the prosecution. However, the trial Court, after considering the fact that PW1 sustained injuries and a wound certificate was also issued by PW10 at the time of admission of PW1 at the Hospital, and also considering the fact that there were no reasons to disbelieve the case of the prosecution, convicted the appellant for the 1st and 3rd Charge and sentenced him to undergo Rigorous Imprisonment for 2 years and pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of 8 months for the offence under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of 3 months for the offence under Section 323 of I.P.C.

4. I heard Mr.R.Thirunanam for C.H.Pandian, learned counsel appearing for the appellant/accused and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) appearing for the respondent and perused the entire records.



5.The learned counsel for the appellant would contend that the entire case of the prosecution is based on unfounded allegations and hearsay evidence and hence, the Commission of the offences have not been proved beyond reasonable doubt at all. It is his contention that there is some delay in registration of the F.I.R. which would show that the complaint was only an after thought and the prosecution was unable to produce even one single independent witness who was present at the scene of occurrence to corroborate /sustain the case of the prosecution. It has further been contended that the wound register also does not exactly reflect and tally with the claim made by PW1 and the intent and purport of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has not properly understood by the trial Court and the ingredients for convicting the appellant under the provisions that have been charged against him have also not been satisfied.

6.Per contra, the learned Government Advocate (Criminal Side) would submit that the entire case of the prosecution is built on a strong footing and the fact that PW1 was abused by filthy language, by using the name of his Caste and the subsequent conduct of the appellant in assaulting PW1 has been proven clearly and it is only due to this, that the Session Court has found the appellant guilty of the charges, the defence taken by the appellant is too remote and hence, the learned Government Advocate (Criminal Side) prayed for dismissal of the present appeal.

7.Before we deal with the legality of the matter, this Court is aware of the recent verdict of the Hon'ble Supreme Court whereby the Court has given certain guidelines and restricted the scope of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said judgment is under reconsideration and this Court is given to understand that the matter is subjudice as on date. Since the issue is under consideration, this Court does not intend to, in any way, refer to the said judgment or deal with any aspects dealt therewith. But however, this Court cannot close its eyes and be oblivious of the ground realities that happen every day. The Scheduled Caste and Scheduled Tribe people have over the years by the Constitutional guarantees, empowered themselves and are not denigrated entirely. However, this denigration is still prevalent in the rural and semi rural areas and the atrocities committed against these members are sizeable in number and cannot be ignored merely because certain fictitious and baseless cases have been registered under the Act.

8.This present case has been registered solely based on the complaint given by PW1 and in fact, it is the very same person who has narrated the whole story and also happens to be



the witness injured out of the alleged occurrence of crime. A cursory perusal of the records and depositions would reveal that no single person has been present at the scene of occurrence to corroborate the claim made by PW1. Secondly, the wound certificate issued by PW10 also does not necessarily reflect the claim made by PW1 and as to how he got back pain and neck pain when he was assaulted in his nose is also an unexplained question. Further, the question whether the appellant has used abusive words demeaning the caste to attract the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has also not been proven but for the claim made by PW1. Though the burden of proof has been discharged by the prosecution in the opinion of the trial Court, this Court has to consider whether the said finding is based on material evidence or is it a futile attempt of the prosecution to nail the appellant.

9. In order to sustain conviction under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the ingredients that will have to be necessarily established are that there must be an intentional insult to humiliate a member of a Scheduled Caste in any place with public view. Therefore, the primary ingredient of an intention coupled with a further act to humiliate a member of the Scheduled Caste is to be satisfactorily established. Therefore, once when these ingredients are all not sufficiently established, then a conviction under the said provision cannot be sustained. Had there been at least one independent to sustain and support the statement of PW1, who is the injured witness, this Court would have refrained from interfering with the finding of the lower Court. However, not even a single direct witness have deposed or testified against the appellant. Thus, the conviction cannot be sustained on illusory grounds but can only be done based on material evidence. Another aspect that has to be taken into consideration is the fact that the accused has assaulted PW1 and PW2 to PW5 prevented the accused from further assault has also not been proven since all of them have turned hostile. The wound certificate also does not necessarily reflect the narration of the prosecution. Therefore, it becomes quite evident that the window of benefit of doubt is now quite open in favour of the appellant. This Court does not intend to close the window since there are no warranting reasons not to exercise this benefit in favour of the accused. Therefore, for the above said reasons, this Court finds that the prosecution has not established its case beyond reasonable doubt and accordingly, the finding of the trial Court cannot be sustained. Hence, the present Criminal Appeal stands allowed and the sentence imposed is hereby set aside and the appellant is acquitted of all charges.



10. While parting with this matter, it has to be pointed out that every case cannot be painted with the same brush and merely because an enactment, at times, is misused or abused, it cannot be a ground to restrict its scope and ambit. Since the issue on this context stands subjudice before the highest Court, this Court does not intend to express anything much more than this and concludes that every single case has to be dealt with based on its peculiarity of facts to ensure that the wrong-doers perish and the innocent are not scape-coated.

Sd/-

Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

vs

To

1. The Principal Sessions Judge,
Dharmapuri.
2. The Judicial Magistrate Court II,
Dharmapuri.
3. The Chief Judicial Magistrate,
Dharmapuri.
4. The Deputy Superintendent of Police,
Dharmapuri.
5. The Collector,
Dharmapuri.
6. The Director General of Police,
Mylapore.
7. The Public Prosecutor,
High Court, Madras.

Crl.A.No.65 of 2010
and
M.P.No.1 of 2010

RV (CO)
GN (12/06/2018)