

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 13.04.2018
CORAM
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN
Crl.A.No.7 of 2012

V.Muniyan ... Appellant / P.W.1
Vs.
1. Periyappu @ Vijayavel
2. Rasu @ Krishnasamy ... Respondents / Accused
3. State by
The Deputy Superintendent of Police
Perundurai Sub-Division,
Erode Rural District
Erode.
4. The Station House Officer
Malayampalayam Police Station,
Erode District. ... Respondents /
Complainants

Prayer:- Criminal Appeal filed under Section 372 Cr.P.C., as against the Judgment of acquittal passed by the learned Special Judge / Principal Sessions Judge, Erode made in Spl.S.C.No.135 of 2011, dated 21.10.2011 acquitting the respondents 1 and 2 herein from the charges under Section 447 IPC, Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 355 and 323 of IPC.

For Appellant : Mr.S.Sathia Chandran

For Respondent : Mr.S.N.Arunkumar, for
Mr.C.Ramkumar for R1 and R2
Mrs.M.Prabavathi Ganesh Ram
Additional Public Prosecutor R3 & R4

JUDGMENT

This Criminal Appeal has been filed by the victim / P.W.1 against the Judgment of the Principal District and Sessions Court, Erode, dated 21.10.2011 acquitting the respondents 1 and 2 / accused 1 and 2 for the offences under Section 447 IPC, 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and A2 also for the offence under Section 355 and 323 IPC.

2. The case of the prosecution is that the appellant / defacto-complainant Muniyan belongs to Hindu Chakkaili of Scheduled Caste community and the accused 1 and 2 belong to Hindu Kongu Velalar Backward Community. The complainant

Muniyan took 1 1/2 acres land belonging to P.W.5 Subramaniam through the first accused for lease. The complainant refused the request of A1 to sell the haystack to him. Due to that at 7 a.m on 04.02.2011 when the paddy harvest was in process with the coolie workers in the land of Subramaniam, A1 and A2 trespassed into the land and scolded the complainant by degrading his caste in the presence of others and the second accused assaulted P.W.1 with chappal and thus they committed the offences.

3. The learned District Munsif-cum-Judicial Magistrate, Kodumudi after furnishing copies to the accused committed the case to the Court of Sessions, Erode. The District and Sessions Court, Erode after framing of charges put the accused on trial as they pleaded not guilty to the charges. After examination of prosecution witnesses and marking of documents, incriminating evidence appeared against the accused was put to them under Section 313(1)(b) Cr.P.C and they denied their complicity with the crime.

4. The learned District and Sessions Judge, after analysing the evidence acquitted the accused. Aggrieved by the same, the victim / P.W.1 has preferred this appeal.

5. The learned counsel appearing for the appellant / victim contends that the trial Court is not correct in holding that there is no document with respect to the leasing of the land to P.W.1. There is not even any suggestion on the side of the accused that the land was not taken on lease by P.W.1. It is further contended that to attract offence under Section 3 (1) (x) of SC / ST Act, the presence of general public is not necessary and it is suffice if the offence is committed in any place within public view. It is also further contended that in the absence of any suggestion to P.W.2 as to her non-availability at the time of occurrence, the trial Court is not correct in disbelieving the evidence of P.W.2. The trial Court is also not correct in disbelieving the medical evidence and therefore the Judgment of the trial Court is liable to be reversed and the accused are to be convicted for the offences charged against them.

6. The learned counsel appearing for the respondents 1 and 2 inter alia argued that except the defacto-complainant and his wife, no independent witness was examined though alleged to have been available at the time of occurrence. The complaint given to the police at the first instance has been suppressed. Taking the land on lease by P.W.1 from P.W.5 is false even according to P.W.1. The trial Court after analysing the evidence properly has rightly acquitted the accused and the Judgment of the trial Court does not require any interference.

7. The learned Additional Public Prosecutor appearing for R3 and R4 argued that the prosecution let in evidence to bring

home the guilt of the accused and supports the argument of the appellant.

8. No doubt in a case like this where the victim is from oppressed class, it is very remote to have the independent witness. But in this case on hand, according to the evidence of P.W.1 and P.W.2, they brought the coolie workers for harvesting the paddy in the land and A1 initially started abusing the coolie workers and then scolded P.W.1 as he intervened. Though the coolie workers were brought by P.W.1 to the land and the occurrence took place in their presence, none of them has been examined.

9. P.W.5, land owner categorically says that he leased out the land to A1. P.W.2, wife of P.W.1 has also deposed during cross-examination that lease was taken from the accused / A1. Both P.W.1 and P.W.2 say in their evidence that there was dispute with respect to the lease and also about taking of the haystack with A1. The enmity between the parties, i.e., motive is double edged weapon. Considering the existence of dispute between the parties and also non-examination of independent witnesses though available at the time of occurrence, this Court has to meticulously analyse as to the trust-worthiness of P.W.1 and P.W.2 taking into account the other attending circumstances.

10. The occurrence took place at 7 a.m on 04.02.2011. P.W.1 went to the Government Hospital, Kodumudi and from there intimation reached to Malayampalayam Police at 11.20 a.m itself. P.W.3, who took the victim to the hospital categorically deposed that on 04.02.1011 when he came with the victim to the Government Hospital, Erode from Kodumudi Government Hospital, the police came at 2.30 p.m and they recorded the statement of P.W.1. P.W.1 also says in his evidence during cross-examination that in the complaint recorded by Malayampalayam police, signature of Mani (P.W.3) was also obtained as a witness after getting his signature. Thus it is crystal clear that a complaint was given by P.W.1 at 2.30 p.m on 04.02.2011, the date of occurrence. But the complaint marked as Ex.P.1 depicts that the same was recorded at 2.30 p.m on 05.02.2011 and the same does not bear the signature of the witness, as stated by P.W.1. Thus it is very clear that the complaint as to the occurrence given at the first instance at 2.30 p.m on 04.02.2011 has been suppressed.

11. Considering the suppression of the material document coupled with non-examination of independent witnesses available at the time of occurrence and the prior enmity between the parties do not inspire confidence to hold that P.W.1 and P.W.2 are trustworthy witnesses.

12. For the aforesaid reasons, the trial Court has rightly acquitted the accused and this Court do not see any

reason to interfere with the Judgment of the trial Court and accordingly, this Criminal Appeal is liable to be dismissed.

In the result, this Criminal Appeal is dismissed, confirming the Judgment of acquittal, dated 21.10.2011 in Spl.S.C.No.135 of 2011 on the file of the learned Special Judge / Principal Sessions Judge, Erode.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

tsvn

To

1. The Special Judge /
Principal Sessions Judge, Erode.

2.The Deputy Superintendent of Police
Perundurai Sub-Division,
Erode Rural District
Erode.

3. The Station House Officer
Malayampalayam Police Station,
Erode District.

4. The Public Prosecutor
High Court of Madras.

+1cc to M/s.S.Sathia Chandran, Advocate Sr.No.27513

RJI (CO)
sm:23.4.2018

Cr1.A.No.7 of 2012

WEB COPY