

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.A.No.295 of 1999

1.Jeyaramaraja

2.Lingaraja

3.Varadhan

4.Devaraj

... Appellants

Vs.

Inspector of Police,  
Sathiyamangalam,  
Villupuram District.

... Respondent

Prayer: Appeal filed against the judgment dated 23.03.1999 made in Special Case No.20 of 1998 by the learned Special Judge (Principal Sessions Judge), Villupuram.

For Appellants : Mr.N.P.Kumar

For Respondent : Mr.R.Ravichandran  
Government Advocate (Crl. Side)

J U D G M E N T

The appeal is today listed without E.B. The appellants have filed this appeal against the judgment dated 23.03.1999 made in Special Case No.20 of 1998 by the learned Special Judge (Principal Sessions Judge), Villupuram.

2.The appellants are the accused 1 to 4 respectively, in the case in Special Case No.20 of 1998. The brief case of the prosecution is as follows: P.W.1 belong to Scheduled Caste and the accused does not belong to Scheduled Caste community. On 11.05.1998 at about 4.00 p.m., the accused assembled in the land belonging to one Narayani Ammal in old Chettikulam Village and insulted P.W.1 by calling his caste name. Further, A1 attacked P.W.1 with iron crowbar on his chest, A2 attacked with P.W.1 with wooden log on his left thigh and A3 and A4 also attacked

P.W.1 with wooden log on the backside of P.W.1.

3.Immediately, after the occurrence, P.W.1 himself went to the Government Hospital and was admitted as inpatient. Thereafter, since no action was taken against the accused, P.W.1 sent a registered complaint on 14.05.1998/ Ex.P1 and the same was received by P.W.7 on 16.05.1998. Immediately thereafter, P.W.7 registered FIR/ Ex.P5/ Cr.No.207 of 1998 under Sections 324, 323 and 506 (ii) of IPC r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. Thereafter, the case was taken up by P.W.8/ Deputy Superintendent of Police for further investigation. Immediately thereafter, P.W.8 went to the scene of occurrence and prepared Ex.P2/ observation mahazer and rough sketch/ Ex.P6 and also recorded the statements from the witnesses and laid the final report as against the accused on 05.08.1998.

4.Based on the above materials, the Trial Court framed charges as against the first accused for the offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 and under Section 324 of IPC; as against the accused 2 to 4 for the offence under Section 8 (b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 and under Section 323 of IPC.

5.When the charges framed were explained and read over to them and when questioned about the same, the accused denied the charges and claimed to be tried. Hence, trial was proceeded against the accused.

6.On the side of the prosecution, 8 witnesses were examined as P.W.1 to P.W.8, 6 documents were marked as exhibits Ex.P.1 to Ex.P.6. On the side of the accused no witness was examined, however, two documents were marked as exhibits Ex.P.1 and Ex.P.2.

7.After trial, the Trial Court convicted the first accused under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989; the

second accused under Section 8 (b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 and under Section 323 of IPC; the third accused under Section 8 (b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989; and the fourth accused under Section 8 (b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. The Trial Court acquitted the first accused from the charge under Section 324 of IPC; and the accused 3 and 4 from the charge under Section 323 of IPC.

8.The Trial Court sentenced the first accused to undergo 1 year rigorous imprisonment for the offence under Section 3(1)(x)

of the SC/ST (Prevention of Atrocities) Act, 1989; the second accused to undergo 1 year rigorous imprisonment for the offence under Section 8(b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 and to undergo 3 months rigorous imprisonment for the offence under Section 323 of IPC; the third accused to undergo 1 year rigorous imprisonment for the offence under Section 8(b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989; and the fourth accused to undergo 1 year rigorous imprisonment for the offence under Section 8(b) r/w. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989. The sentences imposed on the second accused were ordered to run

concurrently. Aggrieved by the said conviction and sentence, the appellants / accused have filed this appeal before this Court.

9.The learned counsel appearing for the appellants would contend that there is no material whatsoever available on record to prove the charge under Section 8 (b) r/w. 3 (1)(x) of the SC/ST Act. Admittedly, there is no enmity inbetween P.W.1 and the accused. He would further submit that there are criminal complaint and civil dispute pending inbetween the accused and the one Jayaraman/ relative of P.W.2 and P.W.3 and in order to support the said Jayaraman, the defacto complainant/ P.W.1 lodged a false complaint as against the accused. Even on a bare perusal of the evidence of P.W.1 would reveal that there is no previous enmity inbetween the accused and the complainant. Hence, implicating the accused under Section 8 (b) of the SC/ST Act does not arise and there is no material available to implicate the accused under Section 3 (1)(x) of the SC/ST Act. However, the Trial Court without considering the evidence of P.W.1 to P.W.3 and P.W.6 convicted the accused is unsustainable one. Therefore, the statement to the effect that the accused insulted by calling her caste name is a false and cannot be believed.

10.The learned counsel appearing for the appellants would further contend that as per Section 3 (1)(x) of the SC/ST Act, the offence should have been committed in a public view and some of the public should have viewed the occurrence. However, in the present case, the said occurrence happened in the agricultural field of one Narayani Ammal. In the scene of occurrence only the said Jayaraman who is the relative of P.W.2 and P.W.3 and the accused were present and no other public were present. He would further submit that P.W.2 and P.W.3 are interested persons and hence, their evidence cannot be believed. Accordingly, he prayed for allowing the appeal.

11.Per contra, the learned Government Advocate (Crl. Side)

would submit that P.W.1 belong to Scheduled Caste. Inorder to purchase bricks, he went in search of one Ravi. The said Ravi was not found in his place. When P.W.1 enquired about the same, he came to know that the said Ravi had gone to the agricultural field of one Narayani Ammal. Hence, P.W.1 went to the agricultural field of one Narayani Ammal. There P.W.1 found one Jayaraman and the accused quarrelling with each other. Hence P.W.1 tried to pacify them. At that time, the accused insulted P.W.1 by calling his caste name. Further, A1 attacked P.W.1 with iron crowbar on his chest, A2 attacked with

P.W.1 with wooden log on his left thigh and A3 and A4 also attacked P.W.1 with wooden log on the backside of P.W.1.

12.The learned Government Advocate (Crl. Side) would further submit that P.W.2 and P.W.3 were present at the scene of occurrence. Merely because P.W.2 and P.W.3 are interested persons, it will not wipe out the insult and attack made by the accused on P.W.1 by calling his caste name. He would further submit that the Trial Court has rightly convicted the accused and the well considered judgment of the Trial Court need not be interfered with.

13.I have anxiously considered the rival submissions and perused the impugned judgment.

14.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused more particularly, the charge on the accused under Section 8 (b) r/w. 3 (1)(x) of the SC/ST Act beyond all reasonable doubt.

15.Admittedly, P.W.1 belong to Scheduled Caste. In his evidence, he indicates that there was enmity inbetween one Jayaraman and accused. Hence, he tried to pacify them. Aggrieved by the same, the accused insulted him by calling his caste name and also attacked him. However, on a perusal of the cross- examination of P.W.1, he clearly admitted that there was no previous enmity inbetween the accused and P.W.1.

16.On a close perusal of Section 8 (b) of the SC/ST (Prevention of Atrocities) Act, which is a presumption clause, discloses that if a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regarding land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

17.However, in the present case, P.W.1 himself admitted

that there was no previous enmity inbetween him and the accused. Hence, implicating the accused under Section 8 (b) of the SC/ST (Prevention of Atrocities) Act is not sustainable.

18. Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, reads as under:

'3 Punishments for offences of atrocities:-

(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

.....  
.....

(x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

19. Hence, for an offence under 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, there should be intentional insult or intimidation to a member of SC/ST community in any place within public view.

20. In the decision reported in (2008) 12 SCC 531 (Gorige Pentaiah vs. State of A.P.) the Hon'ble Apex Court while dealing with a case under Section 3(1) (x) has observed as under:

'.....  
When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.'

21. Prosecution is bound to prove all the ingredients prescribed for the offences beyond all reasonable doubts.

22. Further, this Court in the decision reported in (2002) MLJ (Crl.) 202 (Victor Paul and another vs. State), with regard to the phraseology 'public view' employed in Section 3(1)(x) of SC/ST Act, has observed as under:

'4. the word 'public view' is not defined in the Act. The dictionary meaning of the word 'public' is 'open to the people as a whole'. The dictionary meaning of the word 'view' is vision or sight as from a particular position. Reading these two

meanings together in the context of the words 'public view', it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place within 'public view' or in any other place within 'public view'. In either situation, the essential element that requires to be established is that it was in 'public view'. The word 'public view' in the Section is preceded by the word 'in any place within'. Therefore, it is clear to my mind that insult or intimidation should be in a place within public view.'

23. In this background, now we have to see whether the occurrence happened within public view or not.

24. Admittedly, the said occurrence happened in the place belonging to one Narayani Ammal. Perusal of records discloses that before P.W.1 entering into the scene of occurrence, the accused and one Jayaraman assembled there for an existing land dispute. Since there was quarrel inbetween them, P.W.1 tried to pacify them. Except P.W.2 and P.W.3 no other public were present at the scene of occurrence and P.W.2 and P.W.3 are interested persons and relative of one Jayaraman. Thus, the alleged occurrence had not taken place within public view.

25. Further, P.W.1 in his evidence indicates that he sustained grievous injuries on his chest, thigh and backside of his body. The Doctor who gave treatment to P.W.1 at the relevant point of time was examined as P.W.6. Ex.P4 is the wound certificate issued by the Doctor/ P.W.6. Perusal of Ex.P4 reveals that except lacerated injury in the right side of the ear, no other injury was sustained by P.W.1. Hence, the allegation that P.W.1 sustained grievous injury is nothing but false.

26. In view of all the above foregoings, this Court is of the view that the prosecution has not established the guilt on the accused beyond all reasonable doubt. In the absence of any material, this Court has to necessarily interfere with the conviction and sentence imposed by the Trial Court and the same is liable to be set aside.

27. In the result, the criminal appeal is allowed. The conviction and sentence as against the appellants/ accused in the judgment dated 23.03.1999 in Special Case No.20 of 1998 passed by the learned Special Judge (Principal Sessions Judge), Villupuram, are set aside. The appellants/ accused are

acquitted of all the charges. The fine amount, if any, paid by them is ordered to be refunded to them. The bail bonds and the sureties, if any, executed by them, shall stand terminated/discharged.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Special Judge (Principal Sessions Judge),  
Villupuram.
- 2.The Inspector of Police,  
Sathiyamangalam,  
Villupuram District.
- 3.The Public Prosecutor,  
High Court, Madras.

Copy To

The Section Officer,  
Criminal Section, High Court,  
Madras.

+1cc to Mr.N.P.Kumar, Advocate, S.R.No.5429

Crl.A.No.295 of 1999

RSV(CO)  
GN(15/02/2019)

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