



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.390 of 2016

1.C.Selvaraj
2.S.Murugavel
3.S.Murugan
Appellants/A1 to A3

Vs

The Deputy Superintendent of Police,
Vellimedpettai Police Station, Tindivanam

Respondent

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 5.4.2015, made in Special SC.No.180 of 2015, by the Sessions Judge, Special Court for Exclusive Trial of Case registered under the SC/ST (Prevention of Atrocities) Act, 1989.

For Appellant : Mr.K.Selvakumaraswami

For Respondent : Mr.M.Mohamed Riyaz-APP

JUDGEMENT

1.This Criminal Appeal is filed, against the judgement of conviction and sentence, dated, 5.4.2015, made in Special SC.No.180 of 2015, by the Sessions Judge, Special Court for Exclusive Trial of Case, registered under the SC/ST (Prevention of Atrocities) Act, 1989, convicting and sentencing each of the Appellants/A1 to A3 for the offence under Section 341 of IPC to undergo Simple Imprisonment for one month and to pay a fine of Rs.500/- each, in default, to undergo Simple Imprisonment for seven days and convicting and sentencing the Appellants/A1 and A2 for the offence under Section 323 of IPC to undergo Simple Imprisonment for one year and to pay a fine of Rs.3,000/- each, in default to undergo Simple Imprisonment for three months and convicting and sentencing the Appellants/A1 to A3 for the offence under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 to undergo Simple Imprisonment for one



year and to pay a fine of Rs.3,000/- each, in default to undergo Simple Imprisonment for three months.

2. The Respondent had laid the charge sheet against the Appellants/A1 to A3, alleging that on 15.6.2013 at 16.00 hours, near the small bridge 3/5, below the pond at Kodiya Village, the Appellants/accused stopped the van bearing Reg.No.TN 07 J 3984, which was carrying women for work for Auro Food Biscuit Company and that the Appellants/accused had quarrelled with the driver, namely, Iyappan and that the Appellant/A1 had hurled a stone on the back side glass of the Van and caused damage to the backside glass and caused head injury to the witness Alamelu. It was further alleged that one Devaraj, the victim had questioned the Appellants/Accused as to why they were causing problem and the Appellants/Accused had scolded the victim with filthy language by calling him by his caste name and that the Appellants had caught hold of the victim and pushed him from the bridge and the Appellants/A1 and A2 jumped over the victim and caused injury in the head of the victim by using stone. Hence, the Appellants/A1 and A2 had committed the offences under Sections 341, 294(b), 323, 324 and 506(ii) of IPC read with Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 and A3 had committed the offences Sections 341, 294(b) and 506(ii) of IPC read with Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989 and the Appellants/A1 to A3 had committed the offences Sections 341, 294(b), 323, 324, 506(ii) and 34 of IPC read with Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, 1989.
3. The case was taken on file in SC.No.180 of 2015, by the Sessions Judge, Special Court for Exclusive Trial of Case registered under the SC/ST (Prevention of Atrocities) Act, 1989 and necessary charges were framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the prosecution examined PW.1 to PW.9 and also marked Exs.P1 to P8.
4. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses and the accused have come with the version of total denial and stated that they have been falsely implicated in this case. On the side of the defence, no evidence was let in.
5. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Appellants/Accused guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal.
6. This court heard the submissions of the learned counsel on



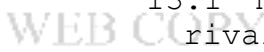
either side.

7. The learned counsel for the Appellants would submit that the entire case of the Prosecution is bristled with embellishments and contradictions and that the Trial Court has failed to look into such embellishments and contradictions in the evidence of PW.1 and PW.2, who are the complainant and the victim and that the evidence of PW.1 and PW.2 is totally contradictory to the evidence of PW.3 and that the evidence of PW.1 and PW.2 does not inspire confidence, however, the Trial Court, without taking into consideration the grave contradictions between PW.1 and PW.2, had recorded conviction based on the evidence of the interested witnesses, who admittedly were having enmity against the Appellants/Accused.
8. The learned counsel for the Appellants would further submit that the Trial Court has also failed to take into consideration the delay in the complaint being made, inasmuch as though the occurrence was said to have taken place on 15.6.2013, the complaint had been given on 17.6.2013 and the First Information Report had reached the Court only on 18.6.2013 and that the reason given by PW.1 and PW.2 to substantiate the delay cannot be believed and that PW.7 is the person, who was said to have accompanied PW.2 at the time of occurrence and witnessed the occurrence and that even as per the evidence of PW.3, the Appellant/A1 was said to have beaten the victim and pushed him, whereas nothing has been stated about the Appellant/A1 having used abusive or offending words against the caste of PW.1. He would further submit that the occurrence was said to have happened when PW.2 was said to have questioned the accused in respect of causing damages to the Van and that the Prosecution failed to examine the owner of the Van or collect any material evidence to show that such an incident had happened at the alleged place of occurrence.
9. The learned counsel for the Appellants would further submit that PW.4, who was stated to be a passenger in the Van and stated to have suffered injury, did not support the case of the Prosecution. Further, the victim PW.1 was said to have been admitted in the hospital by one Rajalingam, son in law of PW.2, however, the Prosecution has failed to examine him as a witness and thereby creating a doubt with regard to the genesis of the Prosecution. As per PW.5, an earlier complaint had been given to the Respondent with regard to the incident of causing damage to his vehicle and that Prosecution has suppressed the earlier complaint and thereby creating a doubt with respect to the entire Prosecution case which has been foisted only due to existing enmity between the parties.



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10. The learned counsel for the Appellants would further submit that as per the evidence of PW.9, Investigating Officer, PW.2 has stated that he had informed the Medical Officer that the occurrence took place near the Kalliamman Temple in Kodiya Village, whereas, as per the rough sketch, Ex.P6, the occurrence was said to have happened on the Western side of the bridge (jiug;ghyk;) and thereby creating a doubt with regard to the place of occurrence and further the Trial Court has also failed to take into consideration the previous enmity between PW.2 and the Appellants/ Accused with regard to the financial dispute and dispute between PW.5 and the Appellant/A1 with respect to a marriage proposal in the family and that in any event, the entire case of the Prosecution is doubtful and the Prosecution has failed to prove its case beyond all reasonable doubts and that in view of the contradictions in the evidence of the witnesses, coupled with the delay in lodging the complaint and the First Information Report reaching the Court, the entire case of the Prosecution is highly doubtful.
11. The learned counsel for the Appellants would further submit that as per the evidence of PW.1 and PW.2, PW.2 became unconscious for two days after the occurrence, whereas as per the evidence of PW.7 Doctor, PW.2 was conscious when he was brought to the Hospital by his son in law Rajalingam, but strangely the said Rajalingam was not examined as a witness and that even as per the evidence of PW.3, PW.2 was conscious when he was taken to his house and only on the disclosure by PW.1 and PW.2, he came to know about the names of the accused and further nothing has been stated by the Prosecution witnesses. He would further submit that for invoking penal provisions under the SC/ST (Prevention of Atrocities) Act, 1989, the offence must have been committed against a person on the ground that such person is a Member of the SC/ST Community, however, in the instant case, no evidence has been let in by the Prosecution to show that the offence had been committed since because PW.2 belongs to the SC Community and in any view of the matter, the impugned judgement of the Trial Court is without any basis and is liable to be set aside.
12. On the other hand, the learned Additional Public Prosecutor for the Respondent would submit that PW.2 is a Member belonging to SC Community and that the Appellants/Accused have caused damage to the Van belonging to PW.5 by pelting stones and when it was questioned by PW.2, the Appellant/A1 abused him with filthy language, by calling his caste name and assaulted him by throwing stones on him and that the Prosecution has proved its case by examination of PW.1 to PW.9 and by marking Ex.P1 to Ex.P8. He would further submit that the delay in filing the final report within 30 days will not cause any prejudice to the accused and if at all any prejudice is caused it could be only



13. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

15.As per the evidence of PW.2, he had deposed that on 15.6.2013 at about 3.30 to 4.00 p.m. while he was near the bridge, near the Kodiyam Eri, the accused had restrained the van belonging to the Biscuit Company and caused damage to it and when he intervened and questioned them, the accused scolded him and abused him with filthy language, saying his caste name and the Appellant/A1 had caused injury on his back side head by a stone and all the other accused had beaten him and thereafter he became unconscious and he regained conscious only in the Hospital and that he told that his wife, PW.1 and one Rajalingam had lodged the complaint with the Police.

<https://hcservices.ecourts.gov.in/hcservices/>



17.PW.5 is the driver of the Van and he had deposed that while he was driving the van after dropping some of the passengers at Kodiyanur and Adanur, some persons had pelted stones, due to which, two ladies, who travelled in the Van sustained injuries and thereafter, he had informed the Contractor and later, villagers came there and stopped the vehicle and later he took the Van and went to the Police Station and given the complaint. In his cross examination, he had admitted that he has got prior enmity with the Appellant/A3.

18.PW.6 is the witness to the observation mahazar. PW.7 is the Doctor, who has spoken about the injuries sustained by PW.2, however, in his cross examination, he had deposed that the son in law of the victim, Rajalingam had explained about the manner in which PW.2 had sustained injuries and that he had deposed that at the time of arrival and giving treatment PW.2 was conscious and he was capable of answering his questions. He had also deposed that the injuries could have been sustained due to a fall from a vehicle.

19.PW.8 is the Special Sub Inspector of Police, who had registered the case based on the complaint given by PW.2 on 17.6.2013 at 9.00 a.m. and he had deposed that after registering the case, he had sent the same to the Judicial Magistrate.

20. PW.9 is the Investigating Officer and he had deposed that on the basis of instructions of the Superintendent of Police, he had taken up the case in Cr.No.188 of 2013 for investigation and that on the next day, he had gone to the place of occurrence and examined the witnesses and prepared the observation mahazar and the rough sketch and on the same day, he had arrested A1 and A2 and sent them to custody and thereafter, he had obtained the community certificate of the victim and obtained the statement of the Tahsildar and finding that the victim belonged to the Adi Dravidar Community and that the accused belonged to the upper Community, he had obtained the community certificates and after examining the Special Sub Inspector of Police and after completing the investigation, he had filed the final report against the accused for the offences under Sections 341, 294(b), 323 and 324 read with Section 3(1) (10) of the SC/ST (Prevention of Atrocities) Act, 1989. He had further deposed that PW.4 had informed him that on 15.6.2013 at around 4.00 p.m. the Appellants/Accused have waylaid the Van, quarrelled with the driver and caused damage to the windshield of the Van and when PW.2 had questioned them, all the three accused have abused him, by calling his caste name and caused injury, however, in the cross examination, he had admitted that there is a discrepancy with regard to the place of



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occurrence and that he had not conducted any further investigation on that aspect. He had also deposed that he had examined Rajalingam, who was said to have taken PW.2 to the Hospital and he had not examined the owner the Van and that he had not sent the Van for motor vehicle inspection. He had also admitted that the final report was filed after 30 days.

21. Upon analysis of the evidence on record, what is to be seen is whether the Prosecution has proved the case beyond all reasonable doubts, whether the evidence of the witnesses inspires confidence and whether the Trial Court is right in convicting the Appellants/Accused.

22. Admittedly, the complaint has been given to the Respondent after two days. The reason given by the victim, PW.2 for such delay is that he was unconscious for two days and he regained conscious after two days of the occurrence. Such part of the evidence of PW.2 that he was unconscious is belied by the evidence of PW.3, who was said to have taken him to his house. Further, PW.7 Medical Officer had also deposed that when he was brought to the Hospital, he was conscious and capable of answering to his questions. The reasons given by PW.2 for the delay in giving the complaint is belied by the other witnesses. The delay has not been properly explained by the Prosecution. Further, said Rajalingam, who was said to have accompanied PW.2 to the Hospital has not been cited as a witness, by the Prosecution, which creates a doubt in the case of the Prosecution.

23. It is the evidence of PW.2 that there was previous enmity between him and the Appellant/A1. It is the admitted evidence of PW.5 Van Driver that he had enmity with A1 on account of marriage of the relative of A3. Further, there is also a discrepancy with regard to the place of occurrence and that the Prosecution has not proved that the alleged occurrence had happened on account of the victim being belonged to SC Community by letting in cogent evidence. No evidence has been let in by the Prosecution to prove that the incident had happened, after the damage was caused to the Van, due to which quarrel ensued between PW.2 and the Appellants/Accused. Further, PW.4, who was said to have travelled as a passenger in the Van, has not supported the case of the Prosecution.

24. Taking into consideration the above discrepancies and contradictions, this Court is of the opinion that the Prosecution has failed to prove its case beyond all reasonable doubts and that the Trial Court has also erred in convicting the Appellants/Accused based on the evidence of the witnesses, which is contradictory in nature, coupled with the fact that there was a previous enmity between PW.2 and A1 with regard to



irrigation of fields, which was also spoken to by PW.5 and accordingly, this Criminal Appeal deserves to be allowed.

25. In the result, these Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellants are acquitted of the charges levelled against them. The bail bond if any executed by them shall stand cancelled and the fine amount if any paid by them shall be refunded to them.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To:

1. The Sessions Judge, Special Court for Exclusive Trial of Case registered under the SC/ST (Prevention of Atrocities) Act, 1989.
2. The Deputy Superintendent of Police, Vellimedpettai Police Station, Tindivanam
3. The Public Prosecutor, High Court, Madras

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