

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.275 of 2017

M.Ashokan

... Appellant/Complainant

vs.

1.The Assistant Commissioner of Police,
F-2, Egmore Police Station,
Egmore,
Chennai 600 008.

... 1st Respondent/Complainant

2.J.Jayapauk Mohan

... 2nd Respondent/Accused

Prayer: The Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records and to set aside the Judgment of acquittal passed by the Learned Special Judge at Chennai under SC/ST (Prevention of Atrocities Act) Learned Principal Sessions Judge, Chennai in Spl.S.C.No.486 of 2012 dated 13.04.2017.

For Appellant : Mr.R.Muniyapparaj

For Respondents: Mr.R.Ravichandran,
Government Advocate (Crl.Side)
for R1

Mr.M.Anandaraj for R2

J U D G M E N T

The above criminal appeal has been filed to call for the records and to set aside the Judgment of acquittal passed by the Learned Special Judge at Chennai under SC/ST (Prevention of Atrocities Act) Learned Principal Sessions Judge, Chennai in Spl.S.C.No.486 of 2012 dated 13.04.2017.

2.The first respondent police registered a case against the second respondent based on the complaint given by the appellant

herein for the offence punishable under Sections 341, 506(i) of IPC and under Section 3(1)(X) of SC/ST Act, 1989. After the investigation, the learned Special Judge acquitted the second respondent, on the ground that the first respondent has not proved his case beyond reasonable doubt. Therefore, the de-facto complainant / appellant herein, after getting a Special Leave from this Court filed the present criminal appeal.

3.The case of the prosecution is that the second respondent is the accused and the appellant is the de-facto complainant. Both the appellant and the second respondent are working as Engineers. When the second respondent worked under the appellant, he had noticed some wrong doings in the official work of the second respondent and has taken departmental action against him by initiating surcharge proceedings. Aggrieved by the action taken by the appellant against the second respondent, the second respondent started threatening him over phone and in person, in respect of which, the appellant had filed a private complaint against the second respondent before the learned XIII Metropolitan Magistrate, Egmore. On 21.08.2009, when the matter came up before the Magistrate, the appellant and the second respondent appeared before the Court and subsequently, after attending the Court when the appellant came out of the Court, the second respondent along with 4 to 5 persons wrongfully restrained him and the second respondent scolded the appellant with filthy language and also by degrading his caste name. The appellant belonged to SC community, the second respondent is Christian - Nadar, therefore the appellant lodged the complaint before the first respondent Police and the first respondent Police has registered the FIR against the second respondent and investigated the matter and laid charge sheet. After taking cognizance of the offence, the case was committed to the Special Court for trial.

4.Before the trial Court, in order to prove the case of the prosecution / the first respondent examined as many as nine witnesses P.W.1 to P.W.9 and eight documents were marked as Ex.P1 to Ex.P8. No materials objects have been marked and after completing the prosecution evidence, incriminating circumstances culled out from the prosecution witnesses put before the second respondent / accused. He denied the same as false. On the side of the defence neither examined any witnesses nor produced any documentary evidence. The Special Judge after going through entire materials placed before him found that the prosecution has failed to prove its case beyond reasonable doubt and acquitted the accused from the charges levelled against him. Therefore, the present appeal is filed by the de-facto complainant.

5.The learned counsel for the appellant / de-facto complainant would submit that the appellant belongs to SC Community and he was working as Engineer, wherein the second respondent / accused also worked under him in the same Office. When, the second respondent had indulged in some malpractices, the appellant has taken surcharge proceedings against the second respondent and therefore, the second respondent threatened the appellant with dire consequences over phone. Hence, the appellant lodged the private complaint against the second respondent. When the case was came up for hearing before the learned XIII Metropolitan Magistrate, Egmore, the appellant in order to make his appearance before the Magistrate went to the Egmore Court Campus. After completing the case, when the appellant came out of the Court complex, the second respondent / accused who also came to the Court to attend the hearing, along with the other persons was restrained the appellant and also scolded in filthy language and also uttered in the name of the caste and degraded the appellant in the public place. Therefore, he lodged the complaint before the first respondent police and the first respondent after investigation filed charge sheet against the second respondent. Though the prosecution cited P.W.1 to P.W.4 as eye witnesses of the occurrence they have categorically stated that the occurrence took place as alleged by the appellant / de-facto complainant and the second respondent waylaid the appellant and also degraded him in filthy language. The trial Court dismissed the case on the technical ground, the complaint was given belatedly and there is a delay in registering the F.I.R and the same was sent to the Court belatedly. The first respondent has not completed the investigation within the stipulated time as specified under the Special Act and further, on the ground that P.W.2 to P.W.4 are only interested witnesses. The trial Court disbelieved the statement of the witnesses and therefore, acquitted the second respondent by extending the benefit of doubt in favour of the second respondent/accused.

6.The learned counsel for the appellant would submit that mere delay in lodging the F.I.R, sending it to Court belatedly cannot be the sole ground for the trial Court to dismiss the case before it.

7.The learned Government Advocate (Crl. Side) appearing for the first respondent would submit that the prosecution has proved its case beyond reasonable doubt.

8.The learned counsel for the second respondent would submit that there is previous enmity between the appellant and the second respondent, due to previous enmity, the de-facto complainant has filed the false complaint against the second respondent by using the caste name.

9. Though the occurrence alleged to have taken place at 11.00 A.M on 21.08.2009 the complaint was given before the first respondent police only at 9.00 P.M. Such a long delay has not been properly explained. Further, though the F.I.R was registered on 21.08.2009 and it reached the Court only on 24.08.2009. It is only half a kilometer between the police station and the place of occurrence and also the police station and Court. Therefore, the said unexplained long delay is fatal to the case of the prosecution. The charge sheet was not filed within 30 days from the date of registration of the complaint, which creates doubt. Admittedly, the trial Court had taken into consideration the alleged occurrence took place in the Court premises itself, but no independent witnesses were examined except the interested witnesses, who alleged to have accompanied with the appellant. Further, the police station is just half a kilometer from the place of occurrence. The appellant lodged the complaint only at 9.00 P.M, whereas the reason for delay has not been properly explained. Therefore, the trial Court has rightly extended the benefit of doubt in favour of the second respondent.

10. Heard the learned Counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel appearing for the second respondent and perused the materials available on record.

11. No doubt, the appellant and the second respondent are working in one and the same Office as Engineers. The second respondent / accused worked under the control of the appellant / de-facto complainant. Admittedly, there was a surcharge proceedings initiated against the second respondent by the appellant. Subsequently, the appellant filed the private complaint before the XIV Metropolitan Magistrate, Egmore, Chennai and posted on 21.02.2008 before the Magistrate. Admittedly, the parties were present on that date and according to the prosecution, when the appellant came to the Court in Egmore on 21.08.2009, after completing his case, when came out of the Court, within the campus of the Egmore Court, the second respondent restrained the appellant and also prevented him to move further and scolded him in filthy language and also degraded his caste name for which, P.W.2 to P.W.4 are eye witnesses to prove his case.

12. According to the second respondent, though he appeared on that day before the said Court, but he never scolded him and he never degraded his caste name. Due to enmity he has filed a false case, taking advantage of his caste name. The learned Magistrate has found that all the witnesses are interested on reading of the entire materials. Admittedly the occurrence was

taken place on 21.08.2009 and the case was pending before the XIII Metropolitan Magistrate, Egmore and both the appellant and the second respondent admitted that the occurrence taken place between 11.00 to 11.30 A.M. The appellant preferred complaint only at 9.00 P.M and however, F.I.R was registered on the same day itself and reached the Court only on 24.08.2009. Therefore, it also creates the doubt in the mind of the trial Court. Mere, delay is not a reason to disbelieve the case of the prosecution and however, the delay has to be explained properly. Even, otherwise after registering the F.I.R, on the next day witnesses were examined on 22.08.2009 itself, but all the recorded statement were sent to the Court belatedly. It is no doubt on verification of records the delay in filing the F.I.R may not be a ground and the delay in sending a F.I.R to the Court is also not a ground to disbelieve the case of prosecution, however, in this case the complainant is an Engineer and the occurrence had taken place in the Court premises at about 11.00 A.M. Whereas, the complaint was given only at 09.00 P.M on 21.08.2009 and the F.I.R was registered on the same day and it reached the Court only on 24.08.2009 and further the statement of witnesses recorded from the witnesses were also not sent to the Court immediately without any reasonable delay after recording from the witnesses.

13. On 23.08.2009 L.W.1 was examined and statement of other witnesses were recorded on 10.09.2009 and 01.10.2009, final report has been laid on 16.12.2009, but all the witnesses were sent belatedly. However, the Sessions Judge, observed in his Judgment that the P.W.1 has used his caste name for the purpose of filing false complaint against the accused is not acceptable one, if at all he warranted to use his caste name for filing false complaint, he could have used this technic prior to filing of the private complaint before the Magistrate.

14. Delay in filing complaint and delay in sending F.I.R to the Court may not be the sole ground to disbelieve the case of the prosecution and acquit the accused, if it is properly explained. But, however, in the present case the prosecution has not properly explained the delay in filing the complaint and also delay in sending the F.I.R and delay in sending the recorded statement of the witnesses to the Court. Since the Appellate Court is final Court of fact findings it has to re-appreciate entire evidence and come to independent conclusion as to whether the prosecution has proved its case beyond reasonable doubt. This Court also arrived at independent conclusion that unexplained inordinate delay in lodging the complaint, sending F.I.R and statements of witnesses to the Court created doubt in the mind of this Court. Therefore, the benefit of doubt is extended to the accused when two views are possible, the view

which is favourable to the accused has to be extended.

15.In the result, the criminal appeal is dismissed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rna

To

1.The Special Judge,
(Under SC/ST Prevention of Atrocities Act),
Chennai.

2.The Assistant Commissioner of Police,
F-2, Egmore Police Station,
Egmore, Chennai 600 008.

3.The Public Prosecutor,
High Court, Madras.

4.The XIV Metropolitan Magistrate,
Egmore, Chennai.

+2 cc's to Mr.M.Anandaraj, Advocate, Sr.No. 19289

+1 cc to Mr.R.Muniyapparaj, Advocate, Sr.No. 19003

Cr1.A.No.275 of 2017

LN(CO)
CSL/02.05.2019

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