



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHANCrl. A. (MD) No. 352 of 2013

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Suresh

.. Appellant/ Defacto Complainant

Vs.

1. State through,
The Deputy Superintendent of Police,
Ambasamuthiram Sub Division,
Tirunelveli District.
2. The Inspector of Police,
Vikramasingapuram Police Station,
Tirunelveli District. ... Respondents/Complainants
3. K.S.Ramasamy Thevar ... Respondent/Accused

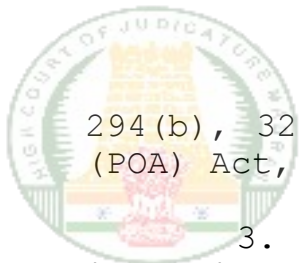
Prayer : This Criminal Appeal is filed under Section 372 of Cr.P.C., to call for the entire records connected with the Judgment rendered by the learned II Additional District Judge, Thirunelveli, in S.C.No.20 of 2009 dated 30.09.2013 and set aside the same and consequently convict the accused/2nd respondent .

For Appellants	: Mr.R.Alagumani
For R-1 & R-2	: Mr.A.Robinson, Government Advocate(Crl. Side).
For R-3	: Mr.A.Thiruvadi Kumar

JUDGMENT

This appeal is directed against the Judgment of acquittal dated 30.09.2013 made in S.C.No.20 of 2009 on the file of the II Additional District Judge, Tirunelveli.

2. The defacto complainant is the appellant. The prosecution case is that on 14.01.2008 at about 6.00 p.m., the accused/K.S.Ramasamy Thevar abused the defacto complainant by referring to his community and also kicked and pushed him down. He is also said to have criminally intimidated him. The case of the defacto complainant is that even though he moved the Inspector of Police, Vikramasingapuram police station, by lodging a complaint, no action was taken. He also sent a representation to the Superintendent of Police. But again no action was taken. Therefore, he filed a private complaint before the Judicial Magistrate, Ambasamudram. A direction under Section 156(3) of Cr.P.C., was issued and that is how Ex.P.6 First Information Report in Crime No.170 of 2008 came to be registered for the offences under Sections



294(b), 323 and 506(ii) of I.P.C. r/w Section 3(1)(x) of the SC/ST (POA) Act, 1989.

3. P.W.14 Deputy Superintendent of Police took up the investigation and filed final report before the Judicial Magistrate, Ambasamudram against the third respondent herein for the offences under Section 294(b), 323 and 506(ii) of I.P.C. r/w. Section 3(1)(x) of the SC/ST(PAO) Act 1989. The case was committed to the Sessions Court in P.R.C.No.65 of 2008. The case was made over to the II Additional District and Sessions Judge, for trial in S.C.No.20 of 2009. The learned trial Judge framed charges against the accused/third respondent herein for the aforesaid offences. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 14 witnesses and marked Ex.P.1 to Ex.P.9. The accused examined one Petchi as D.W.1 and marked Ex.D.1 to Ex.D.3. The learned trial Judge after a detailed consideration of the evidence on record, by the impugned Judgment, found the accused not guilty of the offences with which he was charged. Challenging the Judgment of acquittal, this appeal came to be filed.

5. Heard the learned counsel on either side.

6. The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned Judgment.

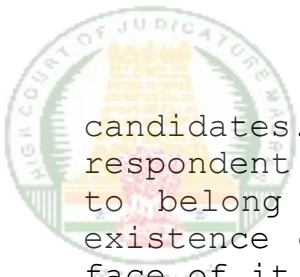
7. Per contra the learned counsel appearing for the third respondent submitted that the impugned Judgment does not call for any interference. The learned Government Advocate assisted this Court.

8. I carefully considered the rival contentions and perused the evidence on record.

9. P.W.1 is the defacto complainant. P.W.2 Sivagami is his wife. Both these witnesses have totally supported the case of the prosecution. Both of them alleged that there were certain issues with regard to disbursement of wages to those who worked in 100 days National Rural Employment Guarantee Scheme.

10. P.W.1 went to Panchayat office in the evening on 14.01.2008. The accused was the Panchayat President. According to P.W.1 and P.W.2, the accused was aggrieved by the lodging of complaint by P.W.1 before the District Collector. It is said to have led the accused to use those abusive utterances and also forcibly assault him. The evidence of P.W.1 and P.W.2 is corroborated by P.W.5 also.

11. It is not in dispute that for the post of Panchayat President, the appellant/defacto complainant was also one of the



candidates. In fact the contest was primarily between the third respondent herein and the appellant. The appellant herein is said to belong to Vidudhalai Siruthaikal political party. Thus, the existence of strong motive between the two is obvious on the very face of it.

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12. P.W.3 Senthil Thangam was also one of the persons who worked in 100 days National Rural Employment Guarantee Scheme. He also belongs to Hindu Paraiyar community, but turned hostile and did not support the case of the prosecution. P.W.4 Mariyappan also turned hostile. P.W.6 Jamuna was also a co-worker and she also turned hostile. P.W.7 Seeniammal who was also a co-worker turned hostile. P.W.8 Vanangamudi Raj was working as a Clerk in the Panchayat office. He turned hostile. On the side of the accused, Ex.D.1 to Ex.D.3 were marked. Ex.D.1 is a copy of the deposition given by P.W.1 in a vigilance case. Ex.D.2 is a copy of the First Information Report lodged at the instance of the son of P.W.1. It is seen therefrom that the said Ex.D.1 also is in respect of a case arising under the SC/ST Act.

13. Though P.W.5 had supported the stand taken by P.W.1 and P.W.2, the Court below chose to reject, principally, for the reason that neither P.W.1 nor P.W.2 stated about the presence of P.W.5 at the time of occurrence. Of course in the private complaint filed by P.W.1, P.W.5 is mentioned as one of the witness. But when this Court went through the copy of the complaint, there is no reference to P.W.5. A suggestion was put to the investigation officer that P.W.5 does not belong to the very same village. P.W.5 is an Advocate's Clerk.

14. P.W.1 in his cross examination admitted that after the elections he and another candidate by name, Ponnusamy filed a Writ petition in which the accused was shown as one of the respondents.

15. The Court below came to the conclusion that there was a serious political animosity between the appellant and the third respondent and that therefore the possibility of false implication cannot be ruled out. This is an appeal against a Judgment of acquittal. When two views can possibly be taken, that in favour of the accused can very well be adopted by this Court. I find no ground to interfere. The Criminal appeal stands dismissed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)



1. The II Additional District Judge,
Thirunelveli.

2. The Deputy Superintendent of Police,
Ambasamuthiram Sub Division,
Tirunelveli District.

3. The Inspector of Police,
Vikramasingapuram Police Station,
Tirunelveli District.

4. The Section Officer, (2 copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.A. THIRU VADI KUMAR, Advocate (SR-83410[F] dated
26/08/2019)

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26.08.2019

VB (05.05.2020) 4P 8C