



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.A. (MD)No.291 of 2019

Velan @ Velandi @ Ponnai

... Appellant

Vs

1.Soundararajan  
2.Uma @ Maheswari  
3.Pottisamy  
4.Gengammal  
5.State represented by the  
Deputy Superintendent of Police,  
Aundipatty Sub Division,  
(In Crime No.44/2004  
of Gandamanur P.S.)

... Respondents

**PRAYER:** Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records in Spl.SC.No.10 of 2009, dated 20.10.2010 on the file of the Principal District and Sessions Judge, Theni and set aside the same and convict the accused for the offences under Sections 323, 355, 306 of IPC, 3(1)(X) of SC/ST (POA) Act r/w 3(2)(V) and 3(1)(XI) of SC/ST (POA) Act.

For Appellant : Mr.A.John Vincent

For R1 to R4 : Mr.S.Mahendrapathy

For R5 : Mr.A.Robinson,  
Government Advocate (Crl.side)

**JUDGMENT**

The respondents 1 to 4 herein were tried in Special S.C.No.10 of 2009 on the file of the Principal District and Sessions Court, Theni for the offences under Sections 323, 354, 355 and 306 of IPC and also under Sections 3(1)(X), 3(2)(V) and 3(1)(XI) of the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vide Judgment dated 20.10.2010 acquitted. Aggrieved by the same, the defacto complainant/P.W.1 has filed Crl.R.C.(MD)No.456 of 2011. Since the impugned Judgment was passed after the amendment to Section 372 of Cr.P.C., came into force, this Court converted the revision case into one of appeal.



2.Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents 1 to 4 and also the learned Government Advocate (Crl.side) appearing for the fifth respondent/State.

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3.The case of the prosecution is that the deceased Mariammal was the wife of the appellant Velan. They belong to a notified scheduled caste. The respondents 1 to 4 herein belong to Hindu Vadugar Community. On 13.03.2004, at about 3.30 p.m., when Mariammal was at her house, the accused attempted to draw the election symbol of a political party on her wall. The deceased Mariammal is said to have objected to the same. The first respondent herein/Soundararajan had abused Mariammal. The third respondent Pottisamy hit her with a reaper. The second and fourth respondent herein also are said to have hit her repeatedly. This was witnessed by Chinnapitchai, Murugesan, Nagarajan and Subburaj. At about 09.00 p.m., the accused had once again attacked Mariammal and abused her by referring to her community. In order to escape from them, Mariammal is said to have refuge in the house of Raju Naicker. She was once again subjected to insult and her saree was also pulled. Overcome by a sense of shame, Mariammal consumed Oleander seeds on 14.03.2004 at 09.00 a.m. She was rushed to the Aundipatti Government Hospital. However, she succumbed on 15.03.2004. In this regard, the appellant Velan lodged complaint before the Kandamanur Police Station vide Ex-P1. Based on the same, Crime No.44 of 2004 (Ex-P6) was registered. Initially, investigation was done by P.W.16-Panner Selvam, the Inspector of Police. Since the offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, were also disclosed, further investigation was taken over by the Deputy Superintendent of Police (P.W.17). Final report was filed before the Judicial Magistrate, Aundipatti against the four accused. The case was committed to the Sessions Court in P.R.C.No.7 of 2008. It was taken up for trial in Special S.C.No.10 of 2009 by the Principal District and Sessions Judge, Theni. Charges were framed against the four accused as follows:-

| Accused     | Penal Provision                                                          |
|-------------|--------------------------------------------------------------------------|
| A1, A2 & A4 | 3(1)(x), 3(2)(v) and 3(1)(XI) of the SC and ST (POA) Act and 306 of IPC  |
| A3          | 355 and 306 of IPC and 3(1)(X) , 3(2)(V) and 3(1)(XI) of SCST (POA) Act. |

The accused denied the charges and claimed to be tried. The prosecution examined as many as 17 witnesses and marked Ex.P1 to



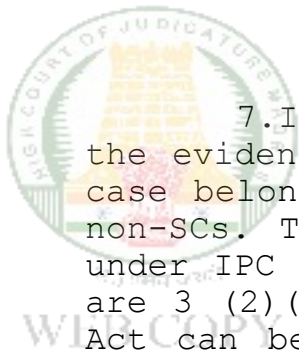
Ex.P13. On the side of the accused, no evidence was adduced. The learned trial Judge, after a detailed consideration of the evidence on record, acquitted all the accused by the impugned Judgment. Aggrieved by the same, the defacto complainant/P.W.1 has filed this appeal.

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4.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum. Even though the State has not filed any independent appeal challenging the acquittal, the learned Government Advocate (Crl.side) supported the appellant's counsel. He submitted that the Court below relying on the decision reported in **2007-1-Law Weekly(Crl) 154 (Sambasivam Vs. State represented by Deputy Superintendent of Police, Mannarkudi)**, acquitted the accused. But there has been a march of law. According to him, the appeal will have to be allowed in view of the decision of the Hon'ble Supreme Court reported in **2017 (14) SCC 304 (State of Bihar Vs. Anil Kumar)**.

5.The appellant's counsel as well as the Government Advocate (Crl.side) would submit that in this case, even though initially investigation was done only by the Inspector of Police, subsequently, further investigation was done only by P.W.17-Gowri Sankar. In fact, the Deputy Superintendent of Police had also recorded further statements from those very witnesses who were examined by the Inspector of Police. More than anything else, there has been no real prejudice caused to the accused. Therefore, the appellant's counsel as well as the Government Advocate (Crl.side) would submit that too much significance should not be attached to the fact that initially, investigation was done by the Inspector of Police who is not authorised to investigate the offence under SC and ST (POA) Act, 1989. In the alternative, they would argue that even though if acquittal in respect of the offences under SC and ST (POA) Act, 1989, is not set aside, still the accused will have to be found guilty in respect of the offences under the Indian Penal Code. The appellant's counsel took me through the testimony of prosecution witnesses. He also pointed out that the prosecution case had been established beyond reasonable doubt. He faulted the trial Court for having adopted a highly narrow and technical approach in this case.

6.Per contra, the learned counsel appearing for the respondents 1 to 4 /accused submitted that the impugned Judgment does not warrant any interference. He wanted this Court to dismiss the appeal. He reminded this Court that this is an appeal against acquittal.



7.I carefully considered the rival contentions and perused the evidence on record. There is no doubt that the victim in this case belongs to notified scheduled caste and that, the accused are non-SCs. The accused have been charged with the offences not only under IPC but also under SC and ST (POA) Act, 1989. The offences are 3 (2)(V), 3(1)(XI) and 3(1)(X). Offence committed under this Act can be investigated only by an officer appointed in terms of Rule 7. Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, reads as under:-

*"7(1).An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."*

8.In this case, immediately, after the registration of the FIR, investigation ought to have been handed over to the Investigating Officer appointed in terms of Rule 7. But it was not done. Instead, P.W.16-Inspector of Police had carried out a good part of the investigation. It is true that thereafter the Deputy Superintendent of Police, namely, P.W.17, had taken over the investigation. But to a specific question put in the cross examination, he could not state if he was an officer appointed in terms of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. It is not that any Deputy Superintendent of Police can carry out the investigation. He must have been appointed in terms of Rule 7. In this case, the investigation was not done by an officer appointed in terms of Rule 7. The Madras High Court, in the decision reported in **2007-1-L.W. (Crl.) 154**, after exhaustively analysing the statutory scheme held that Rule 7 is mandatory and if the same has not been followed, the entire proceedings stand vitiated. The learned trial Judge cannot be faulted for having acquitted the accused in respect of the offences under SC and ST(POA) Act, 1989. This is because, he has only followed the aforesaid binding ruling of the Madras High Court. This decision was followed by another learned Judge of this Court, in the decision reported in **2015-1-MLJ(Criminal)324 (State represented by the Inspector of Police Vs. Ragupathi)**. In fact, between the two rulings, the Hon'ble Supreme Court in **(2010) 1 SCC (Cri) 683 (State of Madhya Pradesh Vs. Chunnilal @ Chunni Singh)**, held as follows:-

*"6.By virtue of its enabling power it is the duty and responsibility of the State Government to issue notification conferring power of investigation of cases by notified police officer not below the rank of Deputy Superintendent of Police for different areas in the police districts. Rule 7 of the*

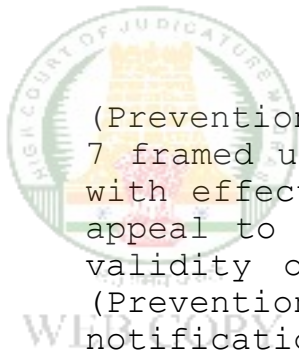


Rules provided rank of investigation officer to be not below the rank of Deputy Superintendent of Police. An officer below that rank cannot act as investigation officer. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation, the proceedings shall proceed in appropriate Court for the offence punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence."

The Hon'ble Supreme Court categorically held that investigation of the offence under Section 3 of the SC/ST Act, by an officer not appointed in terms of Rule 7 is illegal and invalid.

9. Faced with these three rulings, including one by the Apex Court, I am bound to hold that the acquittal of the accused in respect of the offences under Section Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is sound and correct. Of-course, I will have to respectfully refer to the decision reported in **2017 (14) SCC 304 (State of Bihar Vs. Anil Kumar)**, relied on by the Government Advocate (Crl.side) in this regard. As rightly pointed out by the learned appellant's counsel and also the Government Advocate (Crl.side), the subsequent decision of the Hon'ble Supreme Court is by a Three Judges Bench, while the earlier decision was by a two Judges Bench. Yet I may with utmost respect note that in the subsequent decision of the Hon'ble Supreme Court, the earlier decision rendered in **Chunnilal Case** has not been referred to.

10. The question that arose before the Hon'ble Supreme Court in **2017 (14) SCC 304 (State of Bihar Vs. Anil Kumar)**, was whether a notification issued by the State of Bihar under Section 9 under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, authorising all the officers of the rank of the Police Inspector, Sub Inspector of Police and Assistant Inspector of Police to investigate the cases filed under "Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act" is valid or not. The notification was issued on 03.06.2002. It was argued before the High Court that the said notification dated 03.06.2002, was ultra vires the provisions of the Scheduled Castes and Scheduled Tribes



(Prevention of Atrocities) Act, 1989, and was also contrary to Rule 7 framed under the Act. The High Court struck down the notification with effect from 31.03.1995. The State of Bihar took the matter on appeal to the Apex Court. The Apex Court, even while affirming the validity of Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, came to the conclusion that the notification in question was issued under Section 9 of the Parent Act. Resultantly, they upheld not only Rule 7 of the 'SCST Rules', but also the notification dated 03.06.2002 issued by the State Government in exercise of the power vested in it under 9(1)(b) of the 'SCST Act'. Since the notification was published on 09.08.2008, there arose certain issues regarding the validity of the investigation carried out by the Police Officer below the rank of a Deputy Superintendent of Police after 31.03.1995 but prior to 09.08.2008. The question arose was whether they stood vitiated. In that regard, referring to Section 465 of Cr.P.C., the Hon'ble Supreme Court held that the investigation carried out by the Police Officers below the rank of a Deputy Superintendent, after 31.03.1995 and prior to 09.08.2008 would not be vitiated. This was because, no specific finding was recorded that any prejudice was caused to the accused.

11. In the case on hand, the trial Judge, in paragraph 32, has given a finding that prejudice was caused to the accused in this case. In the State of Tamilnadu, there has been no notification in terms of Section 9 of the 'Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act'. I am therefore of the view that a decision rendered in the context of notification under Section 9 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be made applicable to a State where there is no such notification. I therefore, sustain the acquittal of the respondents 1 to 4 herein in respect of the offences under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act).

12. But it is not end of the matter.

13. As rightly contended by the appellant's counsel as well as the Government Advocate (Crl.side), investigation by an officer not authorised in terms of Rule 7 of the 'SCST Rules' will not enure to the benefit of the accused as far as the offences under the Indian Penal Code are concerned.

14. In this case, the accused have also been charged with the offences under Sections 323, 355 and 306 of IPC. It is true that the victim Mariammal died by committing suicide. But the question is whether the accused herein can be fastened with penal liability for the offence under Section 306 of IPC. In a recent decision of the Hon'ble Supreme Court in **Crl.A.No.93 of 2019 (Rajesh Vs.**



**State of Haryana).** It was held as follows:-

'7. It is necessary to refer to Section 306 IPC and Section 107 IPC which reads as under:

'306. Abetment of suicide.If any person commits suicide,whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing.A person abets the doing of a thing, who First.Instigates any person to do that thing; or Secondly.Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.'

8. Conviction under Section 306 IPC is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See *Amalendu Pal alias Jhantu v. State of West Bengal*).

9. The term instigation under Section 107 IPC has been explained in *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)* as follows:



*'16. Speaking for the three-Judge Bench in Ramesh Kumar case [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] , R.C.*

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*Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do (2010) 1 SCC 707 (2009) 16 SCC 605: (2010) 3 SCC (Crl.) 367 an act. To satisfy the requirement of instigation, though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an instigation may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.*

*17. Thus, to constitute instigation, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by goading or urging forward. The dictionary meaning of the word goad is a thing that stimulates someone into action; provoke to action or reaction to keep irritating or annoying somebody until he reacts.'*

Only if it can be shown that the accused had an intention to goad or incite or encourage Mariyammal to commit suicide, then alone they can be held guilty of abetment of her suicide. In this case, the alleged insult had taken place on 13.03.2004. Mariammal consumed poison on 14.03.2004 at 09.00 a.m., From the acts attributed to the accused by no stretch of imagination, this Court can come to the conclusion that the accused intended that Mariammal should die. Therefore, I am of the view that the acquittal of the accused for the offence under Section 306 of IPC is also justified and I find no ground to interfere with the same.

15.The prosecution had relied on the evidence of P.W.1 to P.W.5 in support of its charges. P.W.1 admittedly is not an eye witness. Therefore, no significance can be attached to his evidence. P.W.3 turned hostile. But the remaining three accused namely P.W.2, P.W.4 and P.W.5 have supported the prosecution



case. It is relevant to bear in mind that all these three witnesses belong to the very same community, to which, the victim belonged. P.W.2 had stated that regarding drawing of the election symbol, a dispute arose between Mariammal and Soundararajan. He stated that Soundararajan gave a blow to Mariammal. P.W.4 also stated that Soundararajan hit Mariammal and that Gengammal also hit her. P.W.4 would state that Uma @ Maheswari wife of Soundararajan told them not to beat her and took them away. P.W.4 would however state that Pottisamy hit Mariammal with slipper. P.W.5 also would corroborate the stand taken by P.W.2 and P.W.4.

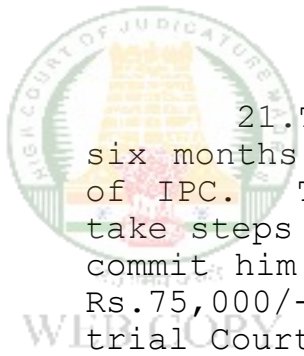
16. On a careful reading of the testimony of P.W.2 to P.W.4, I am convinced that Soundararajan, Pottisamy and Gengammal had assaulted the deceased Mariammal. However, I am of the view that they did not have any intention to outrage the modesty of Mariammal. It is obvious that a petty quarrel relating to drawing of an election symbol had given rise to the whole dispute.

17. It is seen that P.W.2 and P.W.4 have not deposed anything against the second respondent Uma @ Maheswari wife of Soundararajan. Of-course, the testimony of P.W.5, Murugesan is to some extent adverse to A2. But P.W.2 and P.W.4 have not implicated Uma @ Maheswari. On the other hand, their testimony is in her favour. I am of the view that no interference with the acquittal of Uma @ Maheswari is warranted. However, the acquittal of Soundararajan, Pottisamy, Gengammal for the offence under Section 323 of IPC is set aside and they are found guilty of the offence under Section 323 of IPC. These three accused A1, A3 and A4 were also heard with regard to sentence.

18. They prayed that this Court should take a lenient view. They are ready to compensate the victim's family.

19. Pottisamy/A3 submitted that he was in prison for about 52 days. He undertakes to pay sum of Rs.25,000/- as compensation. Hence, no sentence of imprisonment is imposed on him. He is directed to deposit a sum of Rs.25,000/- to the credit of Spl.S.C.No.10 of 2009 on the file of the Principal District and Sessions Judge, Theni, within a period of two weeks from the date of receipt of a copy of this Judgment.

20. As far as A4 Gengammal is concerned, she is the mother of A1 and she must be certainly aged about 71 years. She is also a lady. Hence, Gengammal/A4 is directed to deposit a sum of Rs.50,000/- to the credit of Spl.S.C.No.10 of 2009 on the file of the Principal District and Sessions Judge, Theni, within a period of two weeks from the date of receipt of a copy of this Judgement.



21.The first accused Soundararajan is sentenced to undergo six months rigorous imprisonment for the offence under Section 323 of IPC. The Principal and Sessions Judge, Theni, is directed to take steps to enforce this Judgment and secure the first accused and commit him in prison. The appeal stands partly allowed. A sum of Rs.75,000/- to be deposited as compensation will be disbursed by the trial Court to P.W.1.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS )

**rmi**

To

- 1.The Principal District and Sessions Judge,  
Theni.
- 2.The District Munsif cum Judicial Magistrate,  
Aundipatti, Theni District.
3. The Deputy Superintendent of Police,  
Aundipatty Sub Division,  
Gandamanoor Police Station.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.A.JOHN VINCENT, Advocate SR-76774.  
+1 CC to M/s.K.VELUCHAMY, Advocate SR-77383.

**Crl.A. (MD) No.291 of 2019**  
**22.07.2019**

CS(30.10.2019) 10P 7C