

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO. 835 OF 2001

Rangasamy Gounder
@ Paruthikkarar

.. Appellant

- Vs -

State by Inspector of Police
Uthiyur Police Station
Erode District.

.. Respondents

Criminal Appeal filed u/s 378 of the Code of Criminal Procedure, against the judgment dated 03.08.2001 passed by the learned Principal Sessions Judge, Erode in S.C. No.93/2001.

For Appellant : Mr. P.P.Shanmugasundaram

For Respondents: Mr. C.Iyyappaaj, APP

JUDGMENT

The appellant along with one other accused, who was arrayed as A-2, were charged and tried before the learned Principal Sessions Judge, Erode, in S.C. No.93 of 2001 for the offences u/s 3 (1) (x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and u/s 355 IPC (2 counts) and 323 IPC (2 counts). While A-2 was not found guilty of the offences, A-1 on being found guilty, was sentenced to simple imprisonment for a period of three months on every count for the offence u/s 355 and 323 IPC. However, A-1 was found not guilty of the charge u/s 3 (1) (x) of the SC/ST Act. Challenging the said conviction and sentence recorded by the trial court, the appellant/A-1 is before this Court by filing the present appeal.

2. The brief facts of the case of the prosecution is as under :-

P.W.s 1 and 8 are the victims; P.W.8 is the father of P.W.1 and P.W.9 is the husband of P.W.1. P.W.s 1 and 8 were members of the chit transaction conducted by A-1. While the chit amount paid by P.W.8 was returned, however, the chit amount paid by P.W.1 was not repaid by A-1. On 7.4.01, at about 7.00 a.m., P.W.s 1, 8 and 9 went to the house of the accused and asked A-1 to pay the chit amount. A-1 started abusing P.W.1 in filthy

language using her caste name. He also hit P.W.1 with the chappal and when P.W.8 tried to intervene and prevent the attack, he too was attacked by A-1, which resulted in injuries on P.W.s 1 and 8. Thereafter, P.W.s 1, 8 and 9 left the house of A-1 and went to the police station and P.W.1 lodged the complaint, Ex.P-1 at about 11.30 a.m.

3. On receipt of the complaint, P.W.5, the Special Sub Inspector of Police, registered a case in Crime No.64/01 against the accused and prepared the FIR, Ex.P-8. The printed FIR, Ex.P-8, along with the complaint, Ex.P-1 were forwarded to the jurisdictional Magistrate Court and to his superior officials. P.W.s 1 and 8 were sent for medical examination.

4. P.W.2, was the medical officer in-charge of the Government Hospital, Dharapuram. On P.W.s 1 and 8 appearing before him, he examined them and certified that both P.W.s 1 and 8 have suffered simple injuries and, accordingly, issued, Exs.P-3 and P-2, the wound certificates in respect of P.W.s 1 and 8.

5. P.W.10, the investigating officer, on receipt of the FIR, took up investigation at about 8.00 p.m. On 7.4.01. He went to the scene of occurrence and prepared observation mahazar, Ex.P-11 and drew the rough sketch, Ex.P-12, in the presence of P.W.s 6 and 7. P.W.10 examined P.W.s 1, 8 and 9 and other witnesses and recorded their statements. On 8.4.01, at about 11.00 a.m., P.W.10 arrested the accused and sent them for judicial custody. On the requisition of P.W.10, P.W.s 3 and 4 issued caste certificates, Ex.P-6 and P-7 certifying the caste of P.W.s 1 and 8. After obtaining the medical report and on completion of investigation, P.W.10 laid the charge sheet against the accused on 17.5.01.

6. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the trial court framed the charges as stated above. When questioned, the accused pleaded not guilty.

7. To prove the case, the prosecution examined P.W.s 1 to 10 and marked Exs.P-1 to P-12. When the accused were questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, available on record, while acquitted A-2, however, convicted and sentenced A-1 as above. Aggrieved by the said conviction and sentence recorded by the trial court, the appellant/A-1 has filed the present appeal.

8. Learned counsel for the appellant submitted that the trial court has grossly misdirected itself by convicting A-1. Except for the evidence of the three interested witnesses, viz.,

P.W.s 1, 8 and 9, who are related to each other, there is no other independent witness, who speaks about the occurrence, though the scuffle is said to have happened at the residence of A-1 during daylight. Further, it is the submission of the learned counsel for the appellant that the trial court having acquitted A-2 and also acquitted A-1 of the charge under the SC/ST Act, it clearly shows that the trial court has not believed the prosecution version. That being the case, equally, the trial court ought to have disbelieved the prosecution case insofar as the other offences are concerned and should have acquitted A-1. Therefore, the conviction recorded by the trial court requires interference.

9. Per contra, learned Addl. Public Prosecutor appearing for the respondent submitted that the trial court has taken into consideration all the materials placed by the prosecution and has arrived at a just and reasonable finding regarding the culpability of A-1 in the offence. The trial court has disbelieved the stand of P.W.s 1, 8 and 9 with regard to the inclusion of A-2 but has found force in their evidence insofar as A-1 is concerned. It is the further submission of the learned Addl. Public Prosecutor that the incident having taken place inside the house of A-1, non-examination of independent witness is not fatal, more so, when the evidence of P.W.s 1, 8 and 9 is convincing and corroborates each other. In fine, it is the submission of the learned Addl. Public Prosecutor, that the trial court has considered all the evidence in proper perspective and has rightly convicted and sentenced the appellant and, therefore, no interference is called for with the said conviction and sentence recorded by the court below.

10. This Court heard the learned counsel appearing on either side and also perused the materials available on record to which the court's attention was drawn.

11. The case of the prosecution is that the occurrence had happened on account of A-1 not repaying the chit amount to P.W.1. Though it is the case of the accused that there was no chit transaction conducted by A-1, however, P.W.8, who was also a participant in the chit transaction, has received his amount and has spoken about the same. However, it is the case of A-1 that due to rivalry between him and one Chettimuthu, he has been falsely implicated by P.W.s 1, 8 and 9 on the dictates of Chettimuthu. However, no material to the said effect has been placed on record by A-1. However, it is the case of the prosecution that non-payment of the chit amount led P.W.s 1, 8 and 9 to the house of A-1 and on the demand made by P.W.s 1, 8 and 9 for the return of the money, a quarrel ensued between P.W.s 1, 8 and 9 leading to the scuffle in which A-1 had caused the injuries on P.W.s 1 and 8. To buttress this contention, the wound certificates, Exs.P-2 and P-3 pertaining to P.W.s 8 and 1 show that both the witnesses have suffered simple injuries. Further, P.W.8 has categorically spoken about the chit

transaction with A-1 and has further categorically deposed that Chettimuthu is also one of the subscribers of the chit. The evidence of P.W.s 1, 8 and 9 corroborates on all material aspects and there is no contradiction in their evidence. Though they have been cross examined at length, however, the accused was not able to dent their deposition by eliciting any contradiction. Their evidence coupled with Exs.P-2 and P-3, the wound certificates, go to show that the injuries, though simple in nature, were sustained by P.W.s 1 and 8 in the scuffle that took place in the house of A-1.

12. The trial court, while believing the evidence tabled by the prosecution insofar as the occurrence proper is concerned, however, has refused to accept the case of the prosecution insofar as attracting the offence under the SC/ST Act is concerned. This itself clearly shows that the court below has applied its mind to the facts of the case and has arrived at a just and reasonable finding as to the incident and the outcome of the incident. The trial court, has considered the evidence threadbare and has found that it is A-1 who was the cause of the simple injuries on the person of P.W.s 1 and 8 and, therefore, had convicted A-1 for the offence u/s 355 and 323 IPC, but not accepting the case insofar as the offence under the SC/ST Act is concerned and acquitted him.

13. Though the trial court has accepted the version of the prosecution and has convicted A-1 for the offence u/s 355 and 323 IPC and has sentenced A-1 to undergo simple imprisonment for a period of three months on each count for each of the charge, however, it is evident from the record that it is the prosecution witnesses, P.W.s 1, 8 and 9, who had gone to the house of A-1, which resulted in the incident. The fact that P.W.s 1, 8 and 9 have gone to the house of A-1 and demanded the return of the chit amount from A-1, definitely, P.W.s 1, 8 and 9 would also have been in a volatile state of mind due to the non-payment of the chit amount by A-1, which would have resulted in some wordy altercation between them and A-1 resulting in the incident in which P.W.s 1 and 8 suffered simple injuries.

14. In the above backdrop, this Court is of the considered opinion that while the conviction of the appellant by the trial court does not warrant interference, however, for the reasonings aforesaid, the sentence imposed on the appellant requires to be modified.

15. It is informed by the learned Addl. Public Prosecutor that the appellant has suffered incarceration for a period of about fifteen days. The injuries suffered by P.W.s 1, 8 and 9 being simple in nature, this Court is of the view that the sentence may be modified to the period already undergone.

16. In the result, the appeal is allowed in part by confirming the conviction imposed on the accused, but modifying

the sentence imposed on the appellant to the period already undergone under all of the charges. Since the sentence has been modified to the period already undergone, bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

GLN

To

- 1) The Principal Sessions Judge
Erode District, Erode.
- 2) The Public Prosecutor
High Court, Madras.
- 3) The 1st Additional Sessions Judge - cum-
Chief Judicial Magistrate, Erode.
- 4) The Superintendent of Police, Erode.

+1cc to Mr.P.P.Shanmugasundaram, Advocate SR.No.2400

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VSN II(CO)
GMV(06/02/2020)