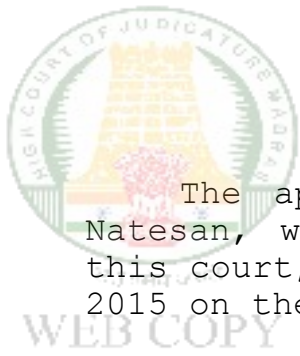




BAIL SLIP

The appellant / sole accused namely Palanivel, aged 45, S/o Natesan, was directed to be released on bail as per the order of this court, dated 30/10/2015 in M.P.(MD)1 of 2015 IN Cr1.A(MD)325 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Cr1.A(MD)No.325 of 2015

Palanivel ... Appellant / Sole Accused

Vs.

1.State Rep. by
The Deputy Superintendent of Police,
Alangudi, Pudukkottai District.

2.State, Rep.by
Inspector of Police,
Vadakadu Police Station,
Pudukkottai District.
(Crime No.44 of 2013)

... Respondent / Complainant

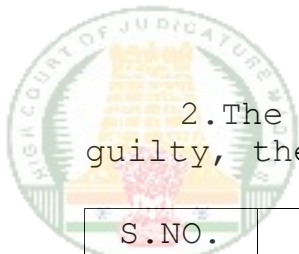
PRAYER: Appeal filed under Section 374(2) of Criminal Procedure Code, against the Judgment and Conviction, dated 26.10.2015, by the learned Principal District and Special Sessions Judge, Pudukkottai in S.C.No.90 of 2013.

For Appellant : Mr.D.Rameshkumar

For Respondents : Ms.S.Bharathi
Govt.Advocate (crl.side)

JUDGMENT

This Criminal Appeal is directed against the Judgment and Conviction, dated 26.10.2015, passed by the learned Principal District and Special Sessions Judge, Pudukkottai in S.C.No.90 of 2013.



2.The trial Court, after trial, found the appellant / accused guilty, thereby, convicted and sentenced, as follows:-

S.NO.	OFFENCE	PUNISHMENT
1	Under Section 294(b) IPC., r/w Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989.	1 year Rigorous Imprisonment and fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for 3 months;
2	Under Section 355 of IPC.,	3 months Rigorous Imprisonment and fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for 1 month;
3	Under Section 323 of IPC.,	3 months Rigorous Imprisonment and fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for 1 month;

3.The sentences were ordered to run concurrently and set off was provided under Section 428 Cr.P.C.

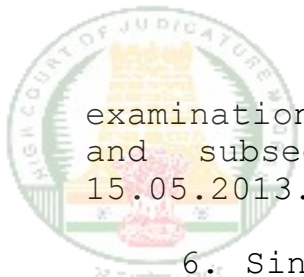
4.For the sake of convenience, the parties are referred to, as per the ranking before the trial Court.

5. The facts of the case are briefly stated hereunder:-

(i) P.W.1 / Defacto Complainant / Victim is the resident of South Street, Karukakurichi and she is studying MBA in Chennai. On 28.04.2013, at about 7.00 a.m., due to illness, she sat in the cot in her house, at that time, the accused, who is the president of the village, came there, attacked the defacto complained, by calling her caste name, on the ground that without respecting the accused, she sat on the cot, thereby, based on the complaint, the law enforcing agency registered the case against the appellant, for the offences under Section 294(b) IPC., r/w Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 355 and 323 of IPC.,

(ii) On 28.04.2013, at about 10.30 a.m., P.W.1 / Victim went to Vadakadu Police Station, given Ex.P1/Complaint to P.W.15 / Sub-Inspector of Police (Training), who issued C.S.R.No.140 of 2013, thereafter, it has been handed over to P.W.12 / Sub-Inspector of Police, for investigation, who registered Ex.P5 / FIR, in Crime No.44 of 2013, for the offence under Section 294(b), 323, 355 of IPC., and Section 3(1)(x) of SC/ST Act.

(iii) On the same day ie., on 28.04.2013, at about 1.50 p.m., she went to the Government Headquarters Hospital, Pudukkottai and on



examination, P.W.1 was admitted, as inpatient, by P.W.11 / Doctor and subsequently, she was discharged from the hospital on 15.05.2013.

6. Since the case under the SC / ST Act has to be investigated by the Deputy Superintendent of Police, on the order of the Superintendent of Police (Ex.P7), dated 30.04.2013, was obtained and P.W.16 / Deputy Superintendent of Police, conducted investigation, went to the place of occurrence and in the presence of P.W.7 and P.W.8, prepared Ex.P8 / Observation Mahazar; Ex.P9 Rough Sketch and examined the witnesses. He also obtained Ex.P6 / Community Certificate of P.W.1/Victim from P.W.14 / Tahsildar and after completion of investigation, he filed the final report in P.R.C.No.11 of 2013 before the Judicial Magistrate, Alangudi.

7. Based on the above materials, the Court below framed charges against the appellant for the offence under Sections 294(b), 323 and 355 of IPC., and Section 3(1)(x) of SC/ST Act.

8. In order to prove the case, on the side of the prosecution, 16 witnesses were examined as P.Ws.1 to 16 and 9 documents were marked as Exs.P1 to P7. On the side of the appellant / accused, no documents were marked.

9. The Court below by pointing out the incriminating materials recorded during the course of trial, questioned the appellant under Section 313(1)(b) of Cr.P.C., and the appellant denied the same as false.

10. The Court below on considering the facts and circumstances of the case and also after analyzing the entire oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and convicted the accused in respect of the offences under Sections 294(b), 323, 355 of IPC., and Section 3(1)(x) of SC/ST Act, and sentenced him as aforementioned.

11. Aggrieved by which, the accused / appellant is before this Court by filing the present appeal.

12. Mr.D.Rameshkumar, the learned counsel appearing for the appellant would submit that P.W.1, P.W.2 and P.W.13, who are all defacto complainant, her father and mother only speaks about the occurrence and other witnesses did not support the version of the prosecution. The Accident Register, registered by P.W.11 / Doctor in her report clearly states that there is no whisper about the injury sustained by the victim. Further, all the independent witnesses turned hostile and there is material contradiction between the witnesses of P.W.1, P.W.2 and P.W.13. There is a delay in lodging the complaint and registering the case. Without considering all these facts, the trial Court convicting the appellant is highly improbable and liable to be set aside.



13. Per contra, Ms.S.Bharathi, the learned Govt.Advocate (crl.side) appearing for the State refuted the contentions put forth by the learned counsel appearing for the appellant. She would further submit that the prosecution, through clinching and undeniable evidence has clearly established the culpability of the appellant in the commission of the crime and the trial court, on careful analysis of the evidence before it, has convicted and sentenced the appellant, as above and, no interference is warranted with the well considered finding recorded by the court below. Hence, prayed for dismissal of the appeal.

14. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

15. The issues that arise for consideration in the present appeal are as follows:-

(i) Whether there is sufficient evidence to prove the ingredients of offence under Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989? and

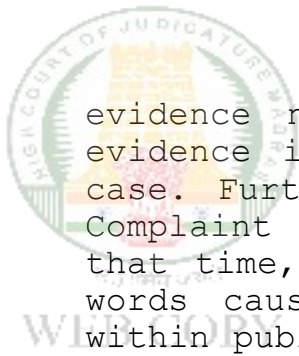
(ii) Whether there is a delay in preferring the complaint is fatal to the case of the prosecution?

16. For better appreciation, Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989, is extracted hereunder:

"Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

17. Admittedly, P.W.1 / Defacto Complainant belongs to Hindu Parayar Community (Schedule Caste) and the accused belongs to Hindu-Kallar, the same was proved through Ex.P6 / Community Certificate issued by P.W.14 / Tahsildar.

18. P.W.1 / Victim in her evidence deposed that on 28.04.2013, at about 7.00 a.m., due to illness, when she sat in the cot in her house, at that time, the accused came there, attacked her by calling her caste name, on the ground that without respecting the accused, she sat on the cot. According to P.W.1 / victim, the said incident was known by one Selvaraj and the said Selvaraj was examined as P.W.3. However, P.W.3 turned hostile. Further, P.W.2 and P.W.13, who are father and mother of P.W.1, in their deposition, reiterated the evidence of P.W.1. Further, P.W.1, P.W.2 and P.W.13 in their deposition stated that, when they were in the hospital, P.W.16 / Deputy Superintendent of Police examined them, when the fact remains that P.W.12 / Sub-Inspector of Police, ~~seems to be~~ P.W.15 / FIR. P.W.1 / Victim, being the MBA student, her



evidence not corroborated with material evidence and no other evidence is available for implicating the accused in the present case. Further, the evidence of P.W.1 / victim as well as Ex.P1 / Complaint makes it clear that when P.W.1 was sat on the cot, at that time, the accused came there, attacked P.W.1. An insult by words caused to a member of scheduled caste or scheduled tribe within public view, means at the time of alleged insult, the person insulted must be present in public view. In other words, the words "within public view" means the public must view the person being insulted, for which, he must be present and in the absence of public view, no offence alleged under this Section is attracted. In her evidence P.W.1 deposed that at that time of occurrence one Selvaraj (P.W.3) was present and he knew the incident. The said Selvaraj (P.W.3) turned hostile. Hence, there is no evidence to show that the accused insulted P.W.1 in any place within a public view.

19. On perusal of Ex.P5 / FIR would show that initial complaint was registered as CSR No.140 of 2013, after investigation, Ex.P5 / FIR was registered. Though there is no delay in lodging the FIR, however, in the complaint, P.W.1 clearly stated that she sat on the cot in the house of one Selvaraj S/o.Palani. However, her father was examined as P.W.2, who deposed that P.W.1 sat on a cot in her house, whereas P.W.13 / Mother of P.W.1 deposed that P.W.1 sate in the house belonged to one Selvaraj. The evidences of P.W.1, P.W.2 and P.W.13 respectively victim, father and mother are not corroborated with each other. P.W.1 and her mother deposed that when P.W.1 sat on the cot in the house of P.W.3 / Selvaraj, however, P.W.3 turned hostile. He did not support the version of P.W.1, P.W.2 and P.W.13. Hence, the prosecution miserably failed to prove that necessary ingredients required under Section 3(1)(x) of the SC/ST Act are not established.

20. For the forgoing reasons, this Court is of the view that the prosecution has miserably failed to prove that the appellant / accused is guilty for the offence, beyond all reasonable doubt.

21. In fine, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / accused in S.C.No.90 of 2013. by the learned Principal District and Special Sessions Judge, Pudukkottai, dated 26.10.2015, is set aside and the appellant is acquitted of the charges framed against him. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The Principal District and Special Sessions Judge,
Pudukkottai.

2.The Judicial Magistrate,
Alangudi, Pudukkottai District.

3.do through The Chief Judicial Magistrate,
Pudukkottai District.

4.The Deputy Superintendent of Police,
Alangudi,
Pudukkottai District.

5. The Inspector of Police,
Vadakadu Police Station,
Pudukkottai District.

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

7.The Record Clerk,
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

Cr1.A(MD)No.325 of 2015

16.03.2020

MPK

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