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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.184 of 2019

Mayilswamy

... Appellant

Vs.

1.State represented by its
Deputy Superintendent of Police,
Erode Rural Sub Division, Perundurai,
(Arachalur P.S.Cr.No.152 of 2017)

2.S.Sowndhararajan
3.Arun @ Arunkumar

... Respondents

PRAYER: Criminal Appeal is filed under Section 372 of Cr.P.C. to set aside the Judgment in Special S.C.No.89 of 2017, dated 16.08.2018 on the file of the learned Principal Sessions Judge / Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

For Appellant : Mr.R.Karthikeyan

For Respondent : Mr.S.Sugendran
Government Advocate
(Criminal Side for R1)

Notice served (R2 & R3)

J U D G M E N T

This Criminal Appeal has been filed by the defacto complainant against the judgment of acquittal dated 16.08.2018, passed in Special S.C.No.89 of 2017, by the learned Principal Sessions Judge / Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

2. The respondent-Police have registered a case in Crime No.152 of 2017 against accused for the offence under Sections 294(b), 506 (i) of IPC and 3(1)(r), 3(1)(s) and 3 (2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)



Act, 2015, [in short 'SC & ST (POA) Act, 2015']; After completing the investigation, the respondent-Police, laid a charge sheet, which was taken on file in Special S.C.No.89 of 2017, by the learned Principal Sessions Judge / Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode

3. After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charge against the accused 1 and 2, the learned Principal Sessions Judge / Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode, has framed charges against the accused No.1 for the offences under Sections 3(1) (r) & (s) of SC & ST (POA) Act, 2015; and under Section 506 (ii) of IPC r/w 3 (2)(va) of SC/ST (POA) Act, 2015; and against the accused No.2 for the offence under Section 506 (i) of IPC r/w 3 (2)(va) of SC/ST (POA) Act, 2015.

4. After completing the trial and hearing the arguments advanced on either side and also considering the oral and documentary evidence, the learned trial Judge, dismissed the Special S.C.No.89 of 2017, against which, the defacto complainant has filed this Appeal.

5. The learned counsel for the appellant would submit that the prosecution has proved its case beyond reasonable doubt. P.W.1 is the victim and he has clearly narrated the incident and even witnesses have also spoken about the same, however, the learned trial Judge acquitted the accused on the ground of delay and laches. It is also submitted that the reason for 8 days delay in lodging the FIR has been explained as due to the ill health of the mother of the defacto complainant, the complaint could not be lodged, however, the learned judge dismissed the Special S.C.No.89 of 2017. Mere delay in filing the complaint is not a sole ground to disbelieve or discard the evidence of the prosecution. It is also further submitted that the private respondents / accused have not discharged the burden of proof as envisaged under SC/ST (POA) Amendment Act, 2015 and in view of the above, the Court below ought not to have acquitted the respondents 2 and 3.

6. The learned Government Advocate (Criminal Side) would submit that the prosecution has proved its case beyond reasonable doubt, however, the learned Judge, the dismissed Special S.C.No.89 of 2017, filed by the defacto complainant on the ground of delay and laches.

7. In spite of service of notice and the name of the private respondents also printed in the cause list, there is no representation for the private respondents.



8. Heard the learned counsel for the appellant /defacto complainant and the learned Government Advocate for the respondent-Police and perused the materials placed on record.

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9. The case of the prosecution is that the first and second accused are friends and they belong to Hindu Vettuva Gounder Community and the accused belongs to Hindu Sakkiliar community. On on 05.07.2017, at about 2.00 p.m., the accused have asked the defacto complainant to take his vehicle, as the first accused could not move his vehicle, for which, the defacto complainant replied that he was parking his vehicle on the side of the road, in which, the first accused got any and knowing that he belongs to Scheduled Caste, abused him by saying that 'நீ வண்டியை முதல் எடுடா சக்கிலி தாயோழி' and then he criminally intimidated that 'வண்டியை எடுடா கோயாலோக்க சக்கிலி தாயோழி வண்டிய பெட்ரோல் ஊத்தி இதே இடத்தில் தீ வைத்து கொழுத்தி விடுவேன் வண்டியை எடுடா சக்கிலி தாயோழி' and further he threatened him that 'வெட்டி கொன்றுவிடுவேன், நீ குடியிருக்கிற வீட்டுடன் தீ வைத்து கொளுத்தி ஊரை விட்டு துரத்தி விடுவேன்;' and at the same time, the second accused criminally intimidated the defacto complainant knowing that he belongs to the member of Schedule Caste 'டேய் நீ ரொம்ப நாளைக்கு உயிரோட இருக்க மாட்ட எங்களோடு கையாலதான் சாவே' and thereby the accused uttered the defacto complainant by using his caste and also uttered obscene language.

10. During the trial, on the side of the prosecution, as many as 5 witnesses were examined as P.W.1 to P.W.5, and 8 documents were marked as Exs.P1 to P8 and no material object was exhibited. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the evidence of prosecution witnesses put before the accused, by questioning under Section 313 of Cr.P.C., they denied as false. On the side of the defence, no witness was examined and no document was marked.

11. After considering the evidence on record and hearing arguments advanced on either side, the learned Principal Sessions Judge / Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode vide judgment dated 16.08.2018 in Special S.C.No.89 of 2017, dismissed the case, as the prosecution has failed to establish the charges framed against the accused 1 and 2 beyond reasonable doubt. Challenging the said Judgment, the appellant / defacto complainant has filed this Appeal .

12. According to the learned counsel for the appellant / defacto complainant, the reason for 8 days delay in lodging the FIR has been properly explained as due to the ill health of the mother, and the defacto complainant was threatened by the accused



13. The alleged occurrence in this case is said to have occurred on 05.07.2017 at 2.00 p.m., and the defacto complainant filed the complaint (Ex.P1) only on 13.07.2017. Though it is the contention of the defacto complainant that due to ill-health of the mother, and the accused have threatened him through phone, the complaint was lodged with a delay, however, such version has not been proved by the prosecution beyond reasonable doubt. It is to be noted no documentary evidence was produced to substantiate that the defacto complainant's mother was taking treatment during the period between 05.07.20217 and 13.07.2017. The Investigating Officer was examined as P.W.5 and in his evidence, he has admitted that the defacto complainant has filed the complaint with a delay of 7 days due to ill-health of the mother, however, he (P.W.5) has not verified or received any document i.e., medical records, prescriptions, to justify the same for delay in filing the complaint.

15. Further, there are contradictions in the statement made by the Inspector of Police (P.W.4), who registered the Ex.P3-First Information Report and the evidence adduced by the defacto complainant. The defacto complainant during the evidence adduced that the accused were drunken mood at the time of the occurrence, however, the Inspector of Police (P.W.4) has stated that the defacto complainant has not stated in the complaint that the accused were drunken mood at the time of occurrence.

<https://hcservices.ecourts.gov.in/hcservices/>



the deposition of the various witnesses equally reveal that their testimony does not corroborate with each other and further the delay in filing the complaint (Ex.P1) has not been properly explained by the prosecution. The defacto complainant (P.W.1) has stated that due to unwell of her mother, the case was registered with a delay, but to substantiate the same, no document has been produced. Though the Investigating Officer (P.W.5) has stated that in the complaint (Ex.P1), the defacto complainant has stated that his mother was unwell, the Investigating Officer has not received any documents or verified to justify the said contention. The next limb of argument with regard to delay in filing the petition, it is stated by the defacto complainant/appellant that due to threat made by the accused, he has not filed the complaint immediately and however, from the evidence of the Investigating Officer (P.W.5), it is clear that the appellant / defacto complainant has not revealed anything with regard to the alleged threat made by the accused, and due to which, the defacto complainant made a complaint with a delay, and during enquiry also, the defacto complainant has not stated anything with regard to the alleged threat made by the accused. Furthermore, the defacto complainant (P.W.1) during evidence adduced that at the time of occurrence, the accused were in the drunken mood, but in the complaint (Ex.P1), which was not reflected and the Inspector of Police (P.W.4), who registered the the First Information Report (Ex.P3) has also admitted that the defacto complainant has not stated during enquiry, that the accused were in drunken mood. Further, the other evidence available on record, in noway, furthers the case of the prosecution and are in no way helpful to interfere with the order of acquittal.

17. It is a settled proposition of law that in case of acquittal, the accused got double presumption in his favour, and unless the appellate Court finds sound reason to interfere with the finding of the Court and perversity in appreciation of evidence, the Judgment of the acquittal cannot be reverted. Therefore, on an overall conspectus of the materials available on record, both oral and documentary evidence, this Court is led to the irrefutable conclusion that the acquittal of the private respondents herein, ordered by the lower Court is based on just and reasonable findings and there being no materials available on record to dislodge the said findings, this Court is left with no other alternative, but to dismiss the appeal.

18. For the reasons aforesaid, this Court does not find any reason to differ from the findings recorded by the learned trial Court to acquit the private respondents herein, and accordingly, this Appeal is dismissed, confirming the Judgment passed in Special S.C.No.89 of 2017, dated 16.08.2018, by learned



Principal Sessions Judge / Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

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Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge / Special Court
for Scheduled Castes and
Scheduled Tribes (Prevention of Atrocities) Act, 1989,
Erode.
- 2.The Deputy Superintendent of Police,
Erode Rural Sub Division, Perundurai,
(Arachalur P.S.Cr.No.152 of 2017).
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

CrI.A.No.184 of 2019

KV (CO)
GMY (02/08/2021)