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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2021
PRONOUNCED ON : 30.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.275 of 2019

Balu @ Balamurugan

...Appellant

Vs.

1. The Deputy Superintendent of Police,
Ariyalur, Ariyalur District.

2. The Inspector of Police,
Kairalabad Police Station,
Ariyalur District.
Crime No.99 of 2017

...Respondents

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. 1973 against the conviction and consequential sentence passed by the learned Principal District and Sessions Judge, Ariyalur, by judgment dated 30.04.2019 in Special S.C.No.7 of 2018.

For Appellant : Mr.C.Prabakaran

For Respondents : Mr.K.Madhan
Government Advocate (Crl.Side)

JUDGMENT

The criminal appeal has been filed against the judgment of conviction and sentence passed in Special S.C.No.7 of 2018 dated 30.04.2019 by the learned Principal District and Sessions Judge, Ariyalur.

2 The respondent police registered a case in Cr.No.99 of 2017 against the appellant for the offences punishable under Sections 294(b), 324, 506(ii) of IPC r/w 3(1)(r), 3(1)(s) and 3



(2) (va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (herein after referred to as the "SC/ST Act").

3 After completing investigation, the respondent police laid a charge sheet before the learned Principal District and Sessions Judge, Ariyalur, which was taken on file in Spl.S.C.No.7 of 2018.

4 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 10 were examined and Exs.P1 to 12 were marked besides one Material Object. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the accused by questioning under Section 313 of Cr.P.C, he denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked.

5 The learned Additional District and Sessions Judge, after trial and hearing arguments advanced on either side, by judgment dated 30.04.2019, convicted the accused and imposed fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of three weeks for the offence under Section 294(b) of IPC, to undergo rigorous imprisonment for a period of one year with fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of two months for the offence under Section 3(1)(r & s) of SC/ST Act, to undergo rigorous imprisonment for a period of one year with fine of Rs.1000/-, in default, to undergo simple imprisonment for a period of two months for the offence under Section 3(2)(va) of SC/ST Act. Aggrieved against the said judgment of conviction and sentence, the accused has preferred this criminal appeal.

6 The learned counsel appearing for the appellant/accused would submit that prosecution has not proved its case against the appellant beyond reasonable doubt. Evidence of P.W.1 and P.W.2 are contradictory from each other and based on the non corroborative evidence, conviction was recorded by the trial Court, which warrants interference of this Court. There are contradictions between the evidence of P.W.1 and the statement recorded under Section 161(iii) of Cr.P.C. According to prosecution, the alleged occurrence has taken place on 19.05.2017 at about 6.00 p.m. but, the case was registered only on 22.05.2017 at about 9.00 p.m. and there is no explanation for the inordinate delay. There is no occurrence taken place as projected by the prosecution and only after deliberation, false case has been registered against the appellant. Therefore, delay in registering FIR is fatal to the case of the prosecution and the trial Court failed to consider the same and appreciate the evidence produced by the prosecution and erroneously convicted



the appellant, which is liable to be set aside.

7 Further, the learned counsel would submit that as per evidence of P.W.1, the incident had taken place on the backside of a Modern School, where no person was available. Per contra, in the Accident Register Ex.P6, it was stated that the alleged occurrence taken place in the backside of Modern School and Bazaar. Therefore there are material contradictions in the materials produced by the prosecution. One occurrence cannot be taken in two different places and therefore the place of occurrence is highly doubtful and the learned trial Judge failed to appreciate the same. P.Ws.1 to 3 are the relatives of the accused and they are interested witnesses and the learned trial Judge erroneously relied on the evidence of interested witnesses and recorded the conviction against the appellant, which is against the law. Further P.Ws.1 & 2 are not eye witnesses and they are only hearsay witnesses. There is no independent witness to corroborate the witness produced by the prosecution. Even though, there were many people available in the place of alleged occurrence, prosecution has failed to examine any independent witness, which is fatal to the case of the prosecution and the learned trial Judge has also failed to consider the same. The learned counsel would further submit that the person who took the injured to the Hospital was not examined and the investigation was not completed within the statutory period. The place in which, the occurrence alleged to have taken place is not in a public view and hence the SC/ST Act would not at all attract. The trial Court failed to consider these aspects and erroneously convicted the appellant, which warrants interference of this Court.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the appellant belongs to non Scheduled Caste community and P.Ws.1 to 3 belong to Scheduled Caste community. The appellant had love affairs with the daughter of P.W.1's brother. When P.W.1 gone to attend nature call in the backside of the Modern School, in connection with the said love affair, the appellant/accused came there and scolded P.W.1 in a filthy language by degrading his caste name and also attacked him with an iron rod, in which, P.W.1 sustained injuries. When P.W.2, who is son of P.W.1, came to the place of occurrence and enquired about the occurrence, P.W.1 narrated everything and immediately, P.W.1 was taken to Hospital. The victim has clearly spoken about the occurrence and also the assault made by the accused. P.W.8, the Doctor, one who admitted the injured in the Hospital, has clearly spoken about the injuries sustained by P.W.1 and P.W.1 has also clearly stated that he was assaulted by one known person and he shown the injuries sustained in the occurrence. The certificate issued by the Tahsildar i.e. Ex.P5 clearly shows that P.W.1 belongs to



the Scheduled Caste community and the appellant is non Scheduled Caste.

9 The learned Government Advocate would further submit that when P.W.8, the Doctor, one who treated the injured witness, questioned P.W.1 regarding the occurrence, he replied one known person attacked him. From the evidence of P.Ws.1 to 3 and 8 and on perusal of Exs.P5 to P7, it is clear that prosecution has proved its case beyond reasonable doubt. The learned trial Judge has rightly appreciated the evidence produced by the prosecution and convicted the appellant and imposed sentence, which does not call for any interference.

10 Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for respondent police and perused the materials available on record.

11 The learned counsel for the appellant vehemently contended that no eye witness was examined and all the witnesses are only hearsay witnesses and the learned trial Judge failed to consider the same and erroneously convicted the appellant. It is settled proposition of law that mere defect in investigation, may not be a sole ground to disbelieve the case of the prosecution. The learned counsel for the appellant further contended that there was delay in lodging complaint and registering FIR. On a perusal of the Ex.P.6, the Accident Register, it reveal that the occurrence took place on 19.05.2017 at about 6.00 p.m. the and victim was admitted in the hospital on 19.05.2017 at 6.15 p.m. i.e. immediately soon after the occurrence. Hence delay in lodging complaint is not a fatal to the case of the prosecution, since the victim was admitted in the Hospital immediately soon after the occurrence. P.W.1, the victim has clearly stated that the occurrence took place in the back side of Modern School. Normally, in the Village, people used to go to the open place, which will in public view, to attend their nature call. Further, P.W.1 has clearly narrated the incident, which was corroborated by the medical evidence. Generally, in village, people will not approach Police Station for every dispute and in some of the villages the SC/ST people are living with fear and also the behavior of some of the non members of SC/ST community Hindu people that the members of SC/ST community are under the control and mercy of the non members of SC/ST caste Hindu people. Hence conjoint reading of evidence of P.Ws.1, 2, 3 and 8 and Ex.P6 and P7, this Court finds that the appellant committed offence as concluded by the trial Court and the trial Court has rightly appreciated the evidence on record and convicted the appellant. This Court does not find any reason to interfere with the judgment of conviction dated 30.04.2019, since it is well founded and reasoned.



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12 In the result, the criminal appeal is dismissed. Trial Court is directed to secure the appellant/accused to undergo remaining period of imprisonment, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Ariyalur.

2.The Deputy Superintendent of Police,
Ariyalur, Ariyalur District.

3.The Inspector of Police, Kairalabad Police Station,
Ariyalur District.

4.The Public Prosecutor, High Court of Madras.

5.The Judicial Magistrate No.1,
Ariyalur.

+1CC to M/s.C.Prabakaran, Advocate SR No.30303

Cr1.A.No.275 of 2019

SR II (CO)
PR (20/07/2021)