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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2021

PRONOUNCED ON : 27.08.2021

CORAM :

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRIMINAL APPEAL NO.526 OF 2020

AND

CRL.M.P.NO.8583 OF 2020

Murugan

... Appellant/
Accused

Versus

1. The Deputy Superintendent of Police
Tindivanam Sub-division
Villupuram District
(Crime No. 167 of 2018 in Mayilam P.S.)

2. Elumalai

... Respondents/
Complainant

[R2 is suo motu impleaded as per order in
Crl.A.No.526/2020, dated 21.12.2020]

Prayer:

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the Judgment dated 14.03.2020 made in Special S.C. No.71 of 2018 on the file of the Sessions Judge, Special Court for SC/ST Cases, Villupuram and acquit and direct the Trial Court to refund the fine amount.

For Appellant : Mr.K.G.Senthil Kumar
for Mr.A.Sathish Kumar

For R1 : Mr.K.Madhan
Government Advocate (Crl.side)

For R2 : Proof of service filed

JUDGMENT

The appellant is the accused. The first respondent is the State and the second respondent is the defacto complainant/victim. The first respondent police registered a



case in Crime No. 167 of 2018, based on the complaint given by the second respondent.

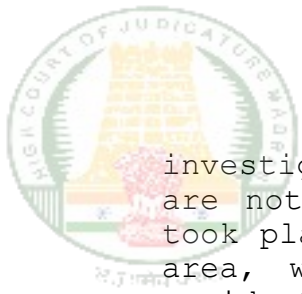
2. After completion of investigation, the first respondent laid a charge sheet against the appellant before the Designated Court/Special Court for Schedule Cast /Schedule Tribes (Prevention of Atrocities) Act, (amended Act 2015). The learned Designated Judge, after completing formalities, framed charges against the appellant for the offences punishable under Sections 323, 506(i) of IPC., read with Section 3(1)(r), 3(1)(s) and 3(2)(v)(a) of SC/ST (POA) Amendment Act 2015.

3. After framing of charges, in order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined as PW.1 to PW.11 and eleven documents were marked as Exs.P1 to P11 and one material object was exhibited as M.O.1/Banyan aerial root.

4. After completing the evidence of the prosecution witnesses, incriminating circumstances culled out from the evidences of the prosecution witnesses were put to the appellant. With reference to the incriminating circumstances, when questioned under Section 313 of Cr.P.C., the appellant denied the same as false and pleaded not guilty. However, on the side of the defence, no oral or documentary evidence produced.

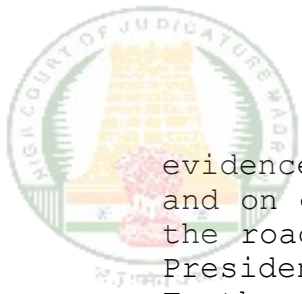
5. On completion of trial, after hearing of the arguments advanced on either side and also considered the materials on record, the learned Designated Judge found the appellant guilty for the offences under Sections 323 & 506(i) of IPC., and sentenced him to undergo one year Rigorous Imprisonment, for each of the offence and also he was convicted for the offence under Section 3(2)(va) of SC/ST (POA) Amendment Act, 2015 and sentenced him to undergo one year Rigorous Imprisonment and to pay fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment. However, both the sentences were ordered to run concurrently and to give set off for the period of imprisonment already undergone by him as per Section 428 of Cr.P.C. Challenging the said Judgment of conviction and sentence imposed on the appellant, the present appeal is filed.

6. The learned counsel for the appellant submits that there is no eye witness in this case and the defacto complainant has foisted a false case against the appellant due to previous motive. The first respondent has not conducted a fair



investigation in this case. The witnesses examined in this case are not belongs to the Perumbakkam Village, but the occurrence took place in Tindivanam Taluk, but they are belonged to another area, which lying in a different Revenue Taluk. PW.1 is a resident of Perumbakkam Village and the witnesses examined in this case are interested witnesses, besides, they are all related to the defacto complainant. Even according to the prosecution, at the time of occurrence, JCB work was in progress and it was on the road side. This had disturbed to PW1, which is the root cause for the alleged occurrence. But the respondent/police did not enquire the JCB Operator, the non-examination of JCB Operator is a fatal to the case of the prosecution. Even, the Investigation Officer, is not a competent officer to investigate this case. Thus, the investigation conducted by another competent person, which is also fatal to the case of the prosecution. There are material contradictions relating to the place of occurrence, time of occurrence, preparation of mahazar and arrest of the accused. Further, PW.1 has stated that he voluntarily admitted himself into the hospital for treatment, whereas, the Investigation Officer has stated that the victim was sent to the hospital through a medical memo. These contradictions are material contradictions, however, the Trial Court failed to appreciate the same, therefore, the prosecution has failed to prove its case beyond all reasonable doubt. Without properly appreciating the material evidences, the Trial Court simply convicted the appellant on the ground of assumption and sympathy. Therefore, the learned counsel for the appellant prayed for setting aside the judgment of the Trial Court.

7.The learned Government Advocate (crl.side) appearing for the first respondent would submit that the victim is a member of the Schedule Caste Community and the appellant is a member of non-schedule caste community. According to the prosecution, on 13.04.2018, at about 9.30 a.m., the victim dropped his brother's son to the School and returning to his home in his two wheeler, on the way, the appellant was working on the road along with a JCB Operator, the victim asked the appellant that as to why he should not leave some space for the public to move on the road, without any disturbance. On hearing this, immediately, the appellant interfered and scolded the de-facto complainant, by uttering his caste name and humiliated him. The appellant also assaulted the victim with aerial root of the banyan tree. Further, the appellant also torned the shirt of the victim. The victim, narrating the above events, and gave the complaint, based on which, First Information Report was registered against the appellant. During investigation, the Investigation Officer has examined PW1 including other witnesses. PW2/ who is a resident of the victim, he is a hearsay witness, in his



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evidence, he has stated that he saw the victim with torn shirt and on enquiry, the victim was told that he asked way to move on the road from the JCB Operator, for which, he was beaten by the President of the Village Panchayat by using his caste name. Further, the evidence of PW.2 was corroborated by PW.3/ who is a resident of the appellant/accused. The Investigation Officer has also examined, the officer, who had issued community certificate to the appellant. PW7/Doctor has also corroborated the evidence of PW.1 to PW.3. The victim is a member of schedule caste community and the appellant is a member of non-schedule caste community, who had humiliated the victim and scolded him in his caste name, besides, the appellant assaulted him with aerial root of banyan tree. Therefore, the offence committed by the appellant has been proved by the prosecution beyond all reasonable doubt. The non-examination of JCB operator is not a fatal to the case of the prosecution, since the de-facto complainant himself, is an injured witness. The injuries sustained by the de-facto complainant has clearly narrated the incident before the Doctor/PW.7, who has also made an entries in the Accident Register, which would show that the de-facto complainant had sustained injuries. Furthermore, the victim has not stated about the exact words uttered by the appellant in filthy language, therefore, the Trial Court acquitted the appellant for the offence under Section 294(b) of IPC., However, it found that the appellant humiliated the victim by uttering his caste name and also assaulted him with aerial root of banyan tree. The Trial Court rightly appreciated the material evidence and convicted the appellant for the offence under Sections 323 & 506(i) of IPC., and Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Amendment Act, 2015. Therefore, he prayed for dismissal of this appeal.

8. Heard both sides and perused the materials available on record.

9. The case of the prosecution is that on 13.04.2018, P.W.1 dropped his brother's son at Thazhuthali Government School, while returning from there to his residence by TVS XL, P.W.1 proceeding near to Throubathi Amman Temple at Thazhuthali village, he had faced some inconvenience to pass the road, since JCB work was under progress on the same road. Due to which, P.W.1 had raised a question to the appellant/accused, who was standing away from JCB, without properly answering him, he abused PW.1 by using P.W.1's caste name and humiliated him, and also attacked him with aerial root of banyan tree. Thereafter, a complaint was lodged on the same day, the First Information Report was registered before the Mayilam Police Station by PW.10/Sub-Inspector of Police in Crime No.167 of 2018 for the



offences under Sections 294(b), 323, 506(i) of I.P.C read with 3 (1)(r), 3(1)(s) of SC/ST (POA) Amendment Act 2015, based on the complaint given by P.W.1, investigation was conducted. After completing the investigation, charge sheet was filed and the same was taken on the file by the Special Court of SC/ST(POA), Act Cases, Villupuram in Spl.S.C.No.71 of 2018. After completion of trial, the appellant was acquitted for the offences under Sections 3(1)(r), 3(1)(s) of SC/ST (POA) of Amendment Act, 2015 and convicted him for the offences under Sections 323, 506(i) of IPC., and Section 3(2)(va) of SC/ST (POA) Amendment Act, 2015. Challenging the said Judgment of conviction and sentence, the accused/appellant filed this Criminal Appeal.

10.This Court being an Appellate Court, as a final Court and fact finding Court, it can re-appreciate the entire material and evidence by giving an independent finding.

11.The Trial Court framed charges as against the appellant as stated above.

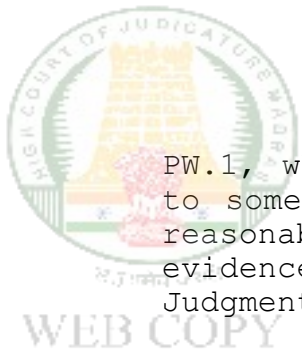
12.It is seen that the Trial Court convicted the appellant for the offence under Sections 323 and 506 (i) of IPC and Section 3(2)(v)(a) of SC/ST (POA) Amendment Act, 2015. In order to prove the case, the prosecution has examined 11 witnesses and marked 11 documents, out of which, the victim was examined as PW.1. He has clearly narrated the occurrence that on 13.04.2018, he dropped his brother's son in the school and returning back to his house, in the place of occurrence, the appellant was standing near a JCB machine. The victim has no space to pass through the road and therefore he asked the appellant to leave some space. At that time, the appellant scolded the victim in filthy language by uttering his caste name, humiliated him and also beaten him with an aerial root of banyan tree. In order to corroborate his evidence, the prosecution has examined PW.2 & PW.3. Though on a reading of deposition of PW.3 would indicate that he is not an eyewitness to the occurrence, soon after the occurrence, they saw the victim with his shirt torned on the back side and also injuries on the back side of the victim. PW2 also stated that he saw the victim while going to his house. Though there is no direct eyewitness in this case, the man who is said to have been operated the JCB, certainly it would have supported the case, if he was examined, but he was not examined. The Doctor, who gave treatment to the victim was examined as PW.7 and stated that as on 13.04.2018, when the victim was admitted for treatment in the casualty ward in the Government Hospital. He has further stated that the victim was informed that he was assaulted by an



unknown person with the aerial root of banyan tree, due to which, he sustained injuries. He has also noticed that there are contusions on his back side of the body with measuring of 3 x 1 cm. He has opined that the said injuries are simple in nature and made entries in the Accident Register, which was marked as Ex.P5. The community certificates issued to the appellant as well as the victim were marked as Exs. P6 and P7, which would show that the victim is a member of the schedule caste community and the appellant is a member of non-schedule caste community and they were marked through PW8.

13. There is no eye witness in this case. PW.2 & PW.3 have not witnessed at the occurrence. They have stated that on the date of occurrence, at about 10.00 a.m., they saw the victim with his shirt torned and some injuries on the backside of his body. Even though the JCB operator was not examined as a witness in this case, he is the man engaged by the appellant and even if he is examined, he would have only supported the case of the appellant. Therefore, the non-examination of JCB operator is not a fatal to the case of the prosecution. In this case, PW.1 is the injured witness and he has narrated the incident and his evidence was corroborated by PW.2, PW.3 & PW.7. Therefore, there is no reason to disbelieve the evidence of the injured witness/PW1. Further, no independent witness examined to show that the appellant humiliated the victim in the presence of the public. The Trial Court, therefore, acquitted the appellant for the offence under Sections 3(1)(r)(s) of the SC/ST Act. At the same time, the prosecution has proved that the victim is a member of schedule caste community and he was beaten by the appellant with aerial root of banyan tree who is non member of the Scheduled Caste Community and caused injury to him, thereby, the Trial Court has come to the conclusion that he has committed the offences under Sections 323 and 506(i) IPC., and Section 3 (2) (v) (a) of the SC/ST (POA) Act.

14. On a careful reading of the entire material records, this Court come to the conclusion that there is no reason made out by the appellant for interference on the Judgment of the Trial Court. Even though the JCB Operator was not examined in this case, it is well settled preposition of law that if the evidence on record is cogent, consistent and trustworthy, the conviction is permissible. In this case, PW.1 is the injured victim and his sole testimony is corroborated by PW.7/Doctor, who has treated him. Further, PW.2 and PW.3, though they did not witness the occurrence, soon after the occurrence, they saw the victim with torned shirt and injuries on his backside. Therefore, there is no reason to disbelieve the evidence of PW.1 and it is credible and trustworthy. Through the evidence of



PW.1, which is corroborated by the evidence of PW's 2, 3 and 7 to some extent, the prosecution has proved its case beyond all reasonable doubt. Therefore, there is no reason to discard the evidence of PW.1 and no sound reason to interfere with the Judgment of the Trial Court.

15. In the result, the Criminal Appeal is dismissed by confirming the Judgment of conviction and sentence dated 14.03.2020 made in Spl.S.C.No.71 of 2018 on the file of the Sessions Judge, Special Court for SC/ST Cases, Villupuram. Consequently, the connected miscellaneous petition filed for suspension of sentence is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge, Special Court for SC/ST Cases, Villupuram.
2. The Deputy Superintendent of Police
Tindivanam Sub-division,
Villupuram District.
3. The Public Prosecutor,
High Court of Madras.

Copy To

The Section Officer,
Criminal Section, (Records) High Court, Madras.

Crl.A.No.526 of 2020
and
Crl.M.P. No. 8583 of 2020

BR(CO)
PM/29/11/2021