



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :04.08.2021

PRONOUNCED ON:07.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.756 OF 2019

P.Radha @ Radhakrishnan

... Appellant/1st Accused

Versus

The State of Tamilnadu
Represented by,
The Deputy Superintendent of Police,
Senji Police Station,
Villupuram District.

... Respondent/Complainant

PRAYER:

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the proceedings in Spl.S.C.No.60 of 2016 on the file of the Special Sessions Judge, Villupuram and setaside the order of conviction dated 24.09.2019.

For Appellant : Mr.S.Ravichandran

For Respondent : Mr.S.Sugendran

Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed to call for the records relating to the proceedings in Spl.S.C.No.60 of 2016 on the file of the Special Sessions Judge, Villupuram and setaside the order of conviction dated 24.09.2019.

2. The respondent police registered the case in Crime No. 696 of 2016 against the appellant herein and four others for the offences under sections 147, 148, 294(b), 323, 354, 506(i) IPC r/w sections 3(1)(r), 3(1)(w)(i) SC/ST (POA) Act. After the investigation laid the charge sheet before the designated Court, since the offences were against the member of the schedule caste and schedule tribe. The designated Court taken the charge sheet



on file in Spl.S.C.No.60 of 2016 and after completing the formalities framed eight charges against all the accused 1 to 5 for the offences under sections 147, 148, 447, 324, 354 and 506 (ii) IPC and sections 3(1)(r), 3(1)(s) of SC/ST Amendment Act and also against A5 charges for the offences under section 3(1)(w)(i) of the SC/ST (POA) Act.

3. In order to substantiate the charges against the accused on the side of the prosecution, after framing the charges, during the trial, as many as 9 witnesses were examined as P.Ws.1 to 9. 11 documents were marked as Exs.P1 to P11. No material object was produced.

4. After completing the examination of the prosecution witnesses, incriminating circumstances were culled out from the evidence of the prosecution witnesses and put before the accused by questioning under section 313 Crpc., with reference to the incriminating circumstances appears on the side of the prosecution witnesses and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, no oral evidence was produced.

5. On completion of trial, hearing the arguments advanced on either side, considering the materials, the trial court convicted the appellant/A1 for the offence under sections 147, 447, and 506(i) IPC and 3(1)(r)(s) SC/ST (POA) Act, and for the offence under section 147 of IPC sentenced to pay a fine of Rs.1000/-, in default to undergo three months simple imprisonment, for the offence under section 447 of IPC, sentenced to pay the fine of Rs.500/-, in default to undergo one month simple imprisonment and for the offence under section 506 (i) IPC sentenced to pay fine of Rs.1000/- in default to undergo three months simple imprisonment, for the offence under section 3(1)(r)(s) of SC/ST(POA) Act sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo three months simple imprisonment and acquitted for the other charges and also challenging the said judgment of conviction and sentence, A1 has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that the appellant is the first accused in the said case and he was charged for the offences under section 147, 447 and 506(i) of IPC and 3(1)(r) and (s) of SC/ST (POA) Act. Alleging that there was a land dispute between P.W.1 and P.W.2 and the present appellant in respect of laying a pathway and on 11.05.2013 at 11 am the appellant assembled with other accused carved a pathway by JCB machine. On seeing the same, P.W.2 questioned the accused and all the accused abused her in a filthy language by saying her caste name and attempted to attack her and pulled her



down and threatened to kill her.

7. The learned counsel for the appellant would further submit that the trial court convicted the appellant and sentenced him to undergo Rigorous Imprisonment for one year, though the independent witnesses had turned hostile. The trial court based on the evidence of interested witnesses, had convicted the appellant. He would further submit that there was a delay in filing the complaint and registering the F.I.R. The inordinate delay was not explained. Therefore, on the unexplained delay in filing the complaint, registered the case are fatal to the case of the prosecution, though the prosecution has stated as directed by this Court in Crl.O.P.No.23541 of 2013 dated 17.09.2013, the respondent police registered the case against the accused. Whereas the copy of the order has not been produced before the trial court as to verify this court had given any direction to register the case. So, as per the directions of this Court, the prosecution registered the case and investigated the matter and laid a charge sheet. So in the absence of the proof of the order of the Crl.O.P, the explanation offered by the prosecution has not been proved. Further he would submit that due to previous motive, they foisted the false case. Further the witnesses P.Ws.1 and 2 are residing in Bangalore and therefore their presence in the place of occurrence on the date of occurrence is highly suspicious. Though the prosecution has stated that since the property is belonging to the witnesses P.Ws.1 and 2, they enjoyed the property through one Vaiyapuri, the appellant along with other accused came to the place and carved the pathway in the patta land and the said Vaiyapuri informed to them, then they came immediately from Bangalore to the native. However in order to establish the same, the said Vaiyapuri was not examined on the side of the prosecution. Further he would submit that at the time of occurrence, VAO, Surveyor and Revenue officials were present. But none of them have been examined. In this case, no independent witnesses were examined and all the witnesses are interested witnesses and they are relative witnesses. Therefore the non examination of the official witnesses are fatal to the case of the prosecution. Therefore, merely based only on the interested witnesses in particular, the independent witnesses were available which is highly suspicious and prosecution has miserably failed to prove his case beyond reasonable doubt. Though in the trial court failed to believe the case of the prosecution for the offences under sections 147, 148 and 447 I.P.C and however they convicted the appellant for the abovesaid charged offences on the very same material evidence. He was convicted only under sections 506(i), 147, 447 and section 3(1)(r)(s) of SC/ST Act whereas, he was acquitted for the other charged offences on the very same evidence and materials. Therefore the prosecution has failed to prove the



case beyond reasonable doubt. Therefore, the Judgment of the trial court warrants interference.

8. The learned Government Advocate would submit that the appellant is belonging to non-member of the SC community and the victim/defacto complainant is a member of the SC community. The land belonging to the witnesses P.Ws.1 and 2. Since they are residing in Bangalore, they leased the land to one Vaiyapuri. He was enjoying the property as a lessee. Therefore on the date of the occurrence all the accused came to the land of the defacto complainant and paved the pathway by using JCB machine, since the said Vaiyapuri is not the owner of the land, he could not prevent it and informed the same to the defacto complainant and they came there on the date of occurrence. At the time, all the accused scolded with filthy language and the appellant attacked the victim with dire consequences and also humiliated their caste name. Though the defacto complainant independently filed the complaint before the respondent police, the respondent police has not taken action immediately. Therefore the defacto complainant approached this Court.

9. This Court also given the direction in CrI.O.P.No.23541 of 2013 dated 17.09.2013 to the respondent police to register the case and to investigate the matter. As per the directions of this Court, subsequently the respondent police registered the case in Crime No.696 of 2013 dated 26.10.2013 and investigated the matter and laid a charge sheet before the designating court since the offences are falls under the Special Act. Therefore the delay in filing the complaint has been explained. P.W.6 in his evidence has clearly stated that he has given the Criminal Original Petition number and the date of the order and therefore it is mere non production of the copy of the order may not be the sole ground to disbelieve the evidence of the prosecution and in order to substantiate the charges, totally nine witnesses were examined and 11 documents were marked. The caste certificate of both the appellant and defacto complainant were produced to prove the caste that the appellant belongs to the non-member of the SC caste and the victim is the member of the SC caste. Further in order to prove the injury sustained by the victim, produced the copy of the accident register and also wound certificate as Exs.P7 and P8 respectively. P.Ws.1 and 2 are the eye witnesses and also the injured witnesses. P.W.1 has clearly stated that the appellant scolded her with filthy language as well as humiliated her caste name and P.W.2 is also the eye witness, has corroborated the same. Though they are interested witnesses and they are injured witnesses, therefore the evidence of the injured has to be taken for consideration. The Doctor also examined as P.W.7. Even in the accident register, it is mentioned that the appellant attacked with a bamboo stick and also with bricks. Therefore the prosecution



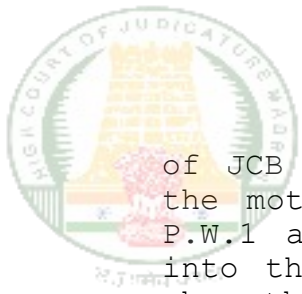
proved its case. The injured witnesses and the medical evidence also corroborated the same. Though the independent witnesses have turned hostile for the reason known to them, the case of the prosecution totally cannot be thrown away. The entire material evidence has to be totally taken for consideration. Under these circumstances the entire materials shows that the appellant has committed the offence even though he was acquitted for some offences and for the lack of particulars, however he was convicted for the abovesaid offences and the prosecution proved his case beyond reasonable doubt. The trial court appreciated the entire materials and convicted the accused. There is no merit in the appeal and the same is liable to be set aside.

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

11. Since this Court is the appellate court, it is a final court of fact finding and in order to give reasons, it has to reappraise the evidence and finding independently. Accordingly this Court also correctly perused the entire materials.

12. The trial court framed the charges against the appellant and other accused as above.

13. In order to substantiate the charges framed against the appellant and other accused on the side of the prosecution, totally nine witnesses were examined and 11 documents were marked. Out of which P.W.1 is a victim and injured, she has clearly stated that her land was leased to one Vaiyapuri. They were residing in Bangalore during the relevant period of time. The appellant was paving the road. At the time when P.W.2 questioning Vaiyapuri why he has not prevented the act and informed the same to them. Vaiyapuri answered that since they are in Bangalore, all the accused came together, he could not prevent that act. Subsequently they removed the said road paved by the accused and they went to Bangalore. Thereafter on 10.05.2013 her grandfather one Sengayni informed them over phone once again the accused paved the road about 20 meters. Thereafter, they came to village on 11.05.2013 at about 9'o clock, they questioned the appellant about the same. After 9 'o clock they went to the place of occurrence and see the road said to have been paved by the accused. At that time all the accused came there and scolded with filthy language and also attacked and beaten P.W.1 and when P.W.2 came and prevented the same, one of the accused beaten on her head and also they threatened that they would kill them and bury them with the help



of JCB and then the victims were taken to hospital. P.W.2 is the mother of P.W.1 she has also corroborated the evidence of P.W.1 and they have clearly stated that the appellant entered into the patta land of the injured witnesses P.Ws.1 and 2 and when they questioned the same, he scolded them by altering the caste name and also beaten them and they sustained injuries subsequently they were taken to hospital for treatment.

14. Though P.W.3 is said to have the eye witness but he has turned hostile. P.W.4 is the mahazar witness. P.W.5 spoken about the issuance of the caste certificate to both the victim and the appellant and therefore from the evidence of P.Ws.1, 2, 4 and 5 and also Exs.P3 to P5 the caste certificates and P.W.5 has proved that the appellant is belonging to non-member of the SC/ST community and the victims are belonging to the member of the SC/ST community. From the evidence of P.Ws.1 and 2 and also from the evidence of P.W.7 doctor and Ex.P6 F.I.R, Ex.P7 copy of the accident register, Ex.P8 wound certificate, it is proved that the victim sustained injuries.

15. The learned counsel for the appellant would submit that there is a delay in registering the F.I.R. As per the evidence Ex.P6 F.I.R, the prosecution proved that, since the respondent police did not take the action immediately, the victim approached this Court for directing the respondent police to register the case and this Court also gave directions in CrI.O.P.No.23541 of 2013 dated 17.09.2013. Thereafter the respondent police registered the case in Crime No.696 of 2016. Therefore the delay has been explained. Though the copy of the order of the Criminal Original Petition is not filed which is not fatal to the case of the prosecution. In the F.I.R itself it is stated that based on the directions given by this Court in CrI.O.P.No.23541 of 2013, F.I.R is being registered. However on investigation it had been found that the accused committed the offence, therefore they filed the charge sheet. The trial court also after completing the formalities, framed the charges against the accused and in order to substantiate the charges, prosecution examined 9 witnesses out of which P.Ws.1 and 2 are the victims and P.W4 is the mahazar witness and P.W.5 is the official witness who gave the caste certificate based on the enquiry. P.W.7 is the doctor who has spoken about the injuries sustained by the victims, therefore on a combined reading of evidences of P.Ws.1 to 7 the prosecution has proved its case for the charged offences. In this case, injured witnesses were examined. Admittedly P.Ws.1 and 2 are the injured witnesses. Exs.7 and 8 also reveals that there is a specific overt act against the appellant and also P.Ws. 1 and 2 who sustained injury. Ex.P7 is the accident register, it is clearly stated that assaulted by four known persons with bamboo stick and though there is no external injury but the victim had body pain.



Ex.P8 is the copy of the accident register. Doctor has also stated known persons assaulted with bricks and by using hands and the victim suffered from body pain and head ache and the injuries sustained by her is simple in nature.

WEB COPY

16. It is found that the sentence of fine was imposed on the accused for the three offences and he was sentenced to undergo one year R.I for the offence under section 3(1)(r)(s) of SC/ST Act. The evidence of P.Ws.1 and 2 clearly show that the appellant humiliated them using their caste name in a public place and he also attacked her knowing fully that P.W.1 and 2 belong to the member of SC community. From Exs.P3 to P5, the prosecution has proved that the victims are members of the SC caste and the appellant is the non-member of the SC community. From the evidence of doctors P.W.7 and P.W.8, it is found that the accused attacked the victims and therefore the offence falls under Section 3(1)(r) and (s) of the SC/ST Act. Since the victims 1 and 2 are the injured witnesses, and no other independent witnesses have been examined, that may not be the sole ground to disbelieve the case of the prosecution and there is no reason to discard the evidence of P.Ws.1 and 2. Evidence of P.Ws.1 and 2 are cogent, consistent and trustworthy and therefore, there is no reason to discard their evidences.

17. The trial court has rightly appreciated the entire evidence and, though acquitted the appellant for the charged offences under sections 148, 324, 354 IPC, had convicted and sentenced the accused for the offences under sections 147, 447 IPC and 3(1)(r)(s) of the SC/ST (POA) Act.

18. This court does not find any perversity or any reason to interfere with the judgment of the trial court. There is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mfa



To

1. The Special Sessions Judge, Villupuram.
2. The Deputy Superintendent of Police,
Senji Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court,
Madras.

CRL.A.No.756 of 2019

SSD (CO)
PM/12/11/2021