



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2021

Pronounced on : 26.04.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD) .No. 283 of 2015

1. Selvam
2. Mayan @ Mayakrishnan : Petitioners / A1 and A2

Vs.

State rep. by the
The Deputy Superintendent of Police,
Thirumangalam Taluk Police Station,
Madurai District.
(Crime No. 86 of 2008)

: Respondent / complainant

PRAYER:- Criminal Appeal filed under Section 374 Cr.P.C., to call for the records in Spl.S.C.No.1 of 2009 relating to the judgment dated 27.08.2015 passed by the III Additional District Judge (PCR) Madurai and to set aside the conviction and sentence passed against the appellants / accused 1 and 2.

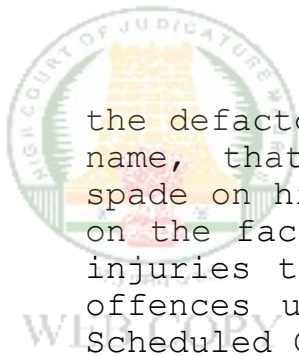
For Appellants : Mr. P. Ganapathy Subramanian
Legal Aid Counsel
For respondent : Mr. V. Neela Kandan
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is directed against the Judgment of conviction passed in Spl.Case.No.1 of 2009, dated 27.08.2015 on the file of III Additional District and Sessions Judge (PCR), Madurai.

2. The appellants are the accused Nos. 1 and 2 in S.C.No.1 of 2009 on the file of III Additional District and Sessions Court, Madurai.

3. The Deputy Superintendent of Police, Thirumangalam has laid a final report alleging that the defacto complainant Murugan belongs to Hindu Pallar Community, that both the accused are belonging to Hindu Piramalai Kallar Community, that on 01.06.2008 at about 18.30 hours, when the accused were taking sand from Vadakarai Panchayat Tank, Sungurampatti Village, the same was questioned by



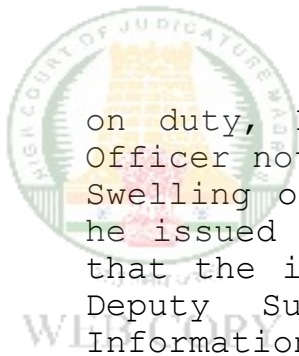
the defacto complainant, that the accused had abused him using caste name, that the first accused assaulted the complainant with the spade on his head and bite his nose, that the second accused punched on the face of the complainant with his hands, that they had caused injuries to the complainant and that the accused had committed the offences under Sections 324 IPC and under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

4. The learned Judicial Magistrate, Thirumangalam had taken the case on file in PRC.No.28 of 2008 and furnished the copies of records under Section 207 of Cr.P.C., on free of costs. The learned Judicial Magistrate finding that the offences under the SC/ST (POA) Act, are exclusively triable by the Special Court under SC/ST Act / Court of Sessions, after compliance under Sections 208 and 209 Cr.P.C., had committed the case to the file of Special Court and the same was taken on file in Spl.S.C.No.1 of 2009 on the file of III Additional District and Sessions Court (PCR) Madurai. After appearance of the accused, the Special Court, on hearing both the sides and on perusal of the records, being satisfied that there existed a prima facie case, against the accused, framed charges under Sections 324 IPC and 3(1)(x) of SC/ST (POA) Act as against the first accused and under Section 323 IPC and 3(1)(x) of SC/ST (POA) Act against the second accused and on being questioned, they denied the charges and pleaded not guilty.

5. The prosecution, in order to prove its case, has examined 9 witnesses as PW.1 to PW.9 and exhibited 6 documents as Exs.P1 to P6.

6. The case of the prosecution emerging from the evidence adduced by the prosecution in brief is as follows:

The defacto complainant PW.1 is residing at Sungurampatti. PW.2 Kandhiah, PW.3 Pandiyarajan, PW.4 - Guruvu and PW.5 Kannan are also residents of Sungurampatti. Three years prior to his giving evidence, the accused were taking sand from Sungurampatti Tank. PW.1 as a village head had questioned them and directed not to take the sand. Both the accused had abused him using Caste name and the first accused had attacked him with spade on his head and bite his nose and that the second accused had punched on the face of the complainant and other parts of his body. Two persons PW.5-Kannan and PW.2- Poosari had intervened and separated them. PW.1 had then visited the police station and gave a complaint under Ex.P1. PW.6- Sub Inspector of Police received the complaint from PW.1 and registered a case in Crime No. 86 of 2008 of Thirumangalam Taluk Police Station under Sections 324 IPC r/w. 3(1)(X) of SC/ST (POA) Act and prepared the First Information Report under Ex.P3. He sent the injured to the hospital by issuing a Medical Memo and then, he sent the original complaint and First Information Report to the Court of Judicial Magistrate and copies to the higher officials. PW.7 Medical Officer on 01.06.2008 at about 8.45 p.m., when he was



on duty, PW.1 visited the hospital for treatment PW.7 - Medical Officer noticed the injury on his head, bite injury on his nose and Swelling on his cheeks, admitted him as an inpatient. Thereafter, he issued the Accident Register under Ex.P4 by giving his opinion that the injury sustained by PW.1 are simple in nature. PW.9 - Deputy Superintendent of Police, after receiving the First Information Report had taken up the investigation and visited the occurrence place, on 02.06.2008 at about 8.30 p.m, and inspected the scene of occurrence in the presence of PW.4 Guruvu and one Nagarajan and prepared the observation Mahazar under Ex.P2 and drew the Rough Sketch under Ex.P6. Thereafter, PW.9 examined the witnesses Murugan, Thanagaiah Poosari, Kannan, Pandiyarajan and recorded the statements. On 02.06.2008 at about 13.30 hours, he arrested the accused and sent them to remand. Thereafter, he examined the Sub Inspector of Police, on 03.06.2008 and recorded the statement. He also examined the Medical Officer and received the Accident Register copy. He submitted a requisition to the Thasildar to issue community certificates to the accused and the complainant and received the same on 17.09.2008. After completing the investigation, PW.9 - Investigating Officer has filed the final report. With the examination of PW.9, the prosecution has closed their side evidence.

7. When the accused were examined under Section 313 (1)(b) Cr.P.C., with regard to incriminating aspects found available in the evidence, they denied the same as false and stated that a false case has been foisted against them.

8. The first accused has examined himself as DW.1 and exhibited 3 documents as Ex.D1 to D3. On 01.06.2008 at about 6, 6.30 p.m., he visited the Sungurampatti, to attend the marriage betrothal of the second accused. While he was returning in a Two Wheeler, PW.1 had attacked him with a rod and DW.1 received injury on his forehead. He preferred a complaint before the Thirumangalam Police Station and on that basis, FIR came to be registered under Ex.D1. He has taken treatment at Government Hospital and the Medical Officer has issued a wound certificate under Ex.D2. Thereafter, the police has filed a final report under Ex.D3. With the examination of DW.1, defence side evidence was closed.

9. The learned Sessions Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment on 27.08.2015 acquitting both the accused for the offence under Section 3(1)(x) of SC/ST (POA) Act and convicted the first accused for the offence under Section 324 IPC and sentenced him to pay a fine of Rs.2,000/- in default to undergo one month Simple Imprisonment and convicted the second accused for the offence under Section 323 IPC and sentenced him to pay a fine of Rs.500/-, in default to undergo one month Simple Imprisonment. Aggrieved by the Judgment of conviction, both the accused have come forward with the present appeal.



10. I have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent.

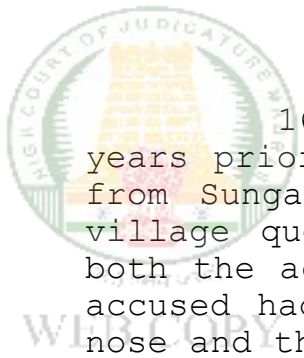
11. Whether the impugned Judgment dated 27.08.2015 in Spl.S.C.No. 19 of 2008 on the file of III Additional District and Sessions (PCR) Court, Madurai is liable to be set aside? is the point for consideration.

12. The learned counsel for the appellants would submit that the ocular evidence of the prosecution witness has not been corroborated with the Medical evidence, that the trial Court has failed to consider that the original report has not been marked and the same was suppressed by prosecution, that the evidence of the occurrence witnesses are quite contradictory with another and that since the conviction was based upon such doubtful evidence, the conviction is liable to be set aside.

13. The learned Additional Public Prosecutor would submit that PW.2, PW.3 and PW.5 had clearly deposed about the occurrence in tune with the evidence of PW.1, that the evidence of PW.1 stands corroborated by the evidence of PW.2, PW.3 and PW.5, that the Investigating Officer has clearly deposed about the investigation conducted, that the ocular evidence also stands corroborated by the medical evidence and that the prosecution has proved the guilt of the accused beyond reasonable doubt.

14. The case of the prosecution is that on 01.06.2008 at about 6.30 p.m., when the accused were taking sand from Panchayat Tank, PW.1 as a head of that village had questioned the action of the accused and directed them not to take sand any more and that both the accused had abused him using Caste name and attacked him and caused injuries. It is further case of the prosecution that the first accused had attacked PW.1 with the spade on his head and also bite his nose and that the second accused had punched on the face and other parts of the body of PW.1. The prosecution has cited and examined PW.2, PW.3 and PW.5 as occurrence witnesses. Though PW.2 has deposed about the occurrence in chief examination, in cross examination, he would admit that he came to the occurrence place only after the incident, that the accused were not present at that time and that he had seen that PW.1 was present with bleeding injury.

15. As rightly contended by the defence, PW.2, even according to him, had not witnessed the occurrence. Though PW.3 - Pandiyarajan has been cited as hearsay witness, he would depose before the trial Court, as if he had seen the occurrence. Admittedly, PW.1 has not referred his name in the complaint nor in his evidence before the trial Court. Hence, the evidence of PW.3 cannot be taken as occurrence witness and no value can be given to

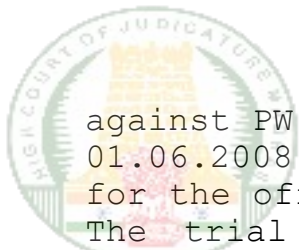


16. PW.1 in his evidence would say specifically that three years prior to his giving evidence, the accused were taking sand from Sungarampatti Tank, that since he was the then head of the village questioned them and directed them not to take sand, that both the accused had abused him using Caste name, that the first accused had attacked with the spade on his head and also bite his nose and the second accused had punched all over his body with hands and that the witnesses Kannan and Poosari had intervened and separated them.

17. PW.5 in his evidence before the trial Court would say that he was grazing his cattle in Vadakarai tank, that at about 6.30 P.M., accused were found fighting with PW.1 and that PW.1 received injuries on his nose and neck. Though PW.1 and PW.5 were subjected to cross examination nothing was elicited by the defence in their favour. PW.7 - Medical Officer would say that when he was on duty on 01.06.2018 at about 8.40 a.m., PW.1 visited the hospital for treatment alleging that he was attacked by unknown persons with iron rod at about 6.00 p.m., on that day, that he noticed a cut injury on his head, bite injury on his nose and swelling on his cheeks, that he admitted him as inpatient and that subsequently, issued the Accident Register extract under Ex.P4 giving his opinion that the injuries suffered by PW.1 are simple in nature. As rightly contended by the prosecution, the evidence of PW.1 stands corroborated by the evidence of PW.5 and also the evidence of PW.3, to the extent he found PW.1 with bleeding injuries in the occurrence place and time. Moreover, the evidence of PW.1 stands corroborated by the medical evidence.

18. It is the specific case of the prosecution that after receiving the First Information Report, PW.9 took up the case investigation and visited the the occurrence place at about 8.30 p.m., on 02.06.2008 and prepared Ex.P2 - observation Mahazar and Ex.P6 - Rough Sketch in the presence of PW.4 and one Nagarajan. PW.4 in his evidence before the trial Court would depose about the preparation of observation Mahazar and rough sketch and subscribing his signature. No doubt, in Cross examination he would say that he was not aware of the contents of Ex.P2. But, at the same time he would deny the suggestion that he had not subscribed his signature as stated by him and that he had signed only at the police station. The evidence of PW.9, regarding the investigation was not at all shaken during his cross examination.

19. The main defence of the accused is that PW.1 alone had attacked the first accused and caused injuries, that his complaint was registered and First Information Report came to be filed against PW.1, that the investigating officer has not conducted the investigation properly and that he has not followed the procedure contemplated for the case and case in counter. No doubt, as evident from the evidence of first accused and the documents produced under Ex.P1 to P9, that the first accused has preferred a complaint



against PW.1 for the incident alleged to have occurred at 6.30 pm on 01.06.2008 and that after investigation, charge sheet has been laid for the offences under Sections 324 and 294(b) IPC as against P.W.1. The trial Court upon considering the evidence of DW.1 and the documents Exs.D1 to D3, has rightly recorded a finding that the occurrence place where the first accused suffered injury and the present case occurrence place are not one and the same and that since it was not shown that the first accused has received injuries in the present occurrence, the contention of the defence that both the cases are to be treated as case and case in counter is liable to be rejected. As rightly observed by the learned trial Judge, the prosecution has proved the charges above noted, against the accused beyond any reasonable doubt. Considering the above, there are no valid reasons or grounds to interfere with the judgment of conviction passed by the trial Court.

20. Now, turning to the punishment awarded, as already pointed out, the trial Court has only sentenced the first accused to pay a fine of Rs.2,000/- for the offence under Section 324 IPC and the second accused to pay a sum of Rs. 500/- for the offence under Section 323 IPC. The trial Court has only imposed the lesser punishment and as such there is no need to interfere with the punishment awarded.

21. In the result, the Criminal Appeal is dismissed and the judgement of conviction and sentence passed in Special Sessions Case No.1 of 2009, on the file of the III Additional District cum Sessions Judge (PCR), Madurai, is confirmed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

To

- 1.The III Additional District Judge (PCR) Madurai.
2. The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai

CRL.A(MD) .No. 283 of 2015
26.04.2021

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