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Crl.A.No.238 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.238 of 2018

Sekar

... Appellant

Vs

State represented by:

The Deputy Superintendent of Police,

Uthangarai Sub-Division,

Uthangarai,

Krishnagiri District.

(Crime No.404 of 2017

Uthangari Police Station)

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code, to call for the entire records in connection with the S.C.No.140 of 2017 on the file of the Learned Principal Sessions Judge, Krishnagiri, Krishnagiri District and set aside the Judgment dated 03.04.2018.

For Appellant : Mr.V.Parthipan for

Mr.E.Kannadasan

For Respondent : Mr.A.Gopinath

Government Advocate (Crl. Side)

JUDGMENT

This appeal is directed as against the Judgment passed S.C.No.140 of 2017 dated 03.04.2018, on the file of the Learned Principal Sessions Judge,



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Krishnagiri, Krishnagiri District, thereby convicted the appellant for the offence punishable under Sections 3(1)(r), 3(1)(s) of SC/ST (POA) Act, 2015 and Section 323 of IPC.

2. The case of the prosecution is that the victim belong to SC community and she pledged a chain and ring which belong to her in Vigneshwar Pawn Shop belonging to the accused on 03.05.2016 and 14.08.2017. On 30.08.2017, when the victim went to the shop to redeem the jewels, after payment of entire amount with interest, the accused instead of returning the jewel, asked her to come the next day. On 01.09.2017, at about 12 noon, the victim went to the accused shop and requested to return the jewels. However, he returned one item of jewel and told her that he will return the other jewel the next day. When the victim objected the same, she was abused by him in filthy language and used her caste name and he also pulled her hand and twisted her and also slapped on her left cheek. He pulled her saree to outrage her modesty by calling her caste name in order to intimidate her in the public view. Hence, the complaint.



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3. On receipt of the complaint, the respondent registered an FIR in Crime No.404 of 2017 for the offence punishable under Sections 294(b), 323 and 354 of IPC and Section 3(1)(r)(s) of SC/ST (POA) Act, 2015. After completion of investigation, the respondent filed a final report and the same has been taken cognizance by the Trial Court in S.C.No.140 of 2017, on the file of the Learned Principal Sessions Judge, Krishnagiri, Krishnagiri District.

4. On the side of the prosecution, they had examined P.W.1 to P.W.19 and marked Exs.P1 to P10. On the side of appellant, no one was examined and marked Exs.D1 and D2. On a perusal of oral and documentary evidence, the Trial Court found the appellant guilty for the offence under Section 3(1)(r)(s) of SC/ST (POA) Act, 2015 and sentenced him to undergo rigorous imprisonment for a period of one year and pay a fine of Rs.2000/-, in default, to undergo rigorous imprisonment for a period of one month. He was also found guilty for the offence punishable under Section 323 of IPC and sentenced to undergo simple imprisonment for a period of one month. The sentences imposed on the petitioner shall run concurrently. Aggrieved by the same, the petitioner preferred this present appeal.



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5. The learned counsel for the appellant would submit that the prosecution failed to prove the charge for the offence under Section 3(1)(r)(s) of SC/ST (POA) Act, 2015, since the appellant did not know about the caste name of the victim. No one had spoken that the appellant scolded the victim in filthy language by using her caste name. The Court below believed the evidence of P.W.1 partly and disbelieved it partly and acquitted the appellant for the offence punishable under Section 354 of IPC and convicted the appellant for the offence under Section 3(1)(r)(s) of SC/ST (POA) Act, 2015 and Section 323 of IPC. There are contradictions in the deposition of P.W.1 and P.W.2. The victim was examined as P.W.1 and her husband was examined as P.W.2. According to the victim, she had given money to redeem the jewels with the appellant. However, P.W.2 deposed that he paid the money to redeem the jewels. Though, P.W.1 and P.W.2 deposed that the appellant is the owner of the Pawn Shop, called Shri Vigneshwar Pawn shop, no piece of evidence was produced by the prosecution to prove that the appellant is the owner of the pawn shop Viz., Shri Vigneshwar Pawn shop. P.W.3, who is the chance witness, was examined as eye witness by the prosecution. According to her when she visited the bank, she found the appellant scolding the victim by using her caste name and also attacked her when she asked for another jewel which was pledged by her. P.W.2, who is the



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husband of the victim, also deposed that he does not know whether the victim sustained injury on her right or left hand. P.W.5 to P.W.14, who were eye witnesses, according to the prosecution, turned hostile. Therefore, the prosecution failed to prove any charge.

6. He further submitted that Ex.P2, the receipt which was issued while pledging the jewel is overlapped by another seal in the name of Vigneshwar Pawn shop. The said receipt was originally printed in the name of “Shri Vijay Jewellery”. It was overlapped by putting the seal in the name of Shri Vigneshwar Pawn shop. In fact, the prosecution failed to produce any piece of evidence to show that the appellant is the owner of the said Shri Vigneshwar Pawn shop. The prosecution also failed to prove the charges for the offence under Section 3(1)(r)(s) of SC/ST (POA) Act, 2015, since as per Section 8(c) of SC/ST (POA) Act, 2015, the accused must have personal knowledge of the victim or his family, then the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved. In the case on hand, the prosecution failed to prove that the appellant had knowledge about the caste of the victim. That apart, the complaint lodged by the victim's brother who is the Village Administrative Officer that too one day after the occurrence.



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Therefore, the Village Administrative Officer knows very well how to lodge a complaint to attract the offence under SC/ST (POA) Act, 2015, Therefore, the prosecution miserably failed to prove any charge as against the appellant.

7. Per contra, the learned Government Advocate (Crl.Side) submitted that in order to bring the charges to home, the prosecution examined P.W.1 to P.W.19 and marked Exs.P1 to P10. P.W.1 to P.W.3 are eye witnesses to the occurrence. P.W.1 and P.W.2 categorically deposed that the occurrence took place in the Pawn shop called Shri Vigneshwar Pawn shop owned by the appellant herein. The victim pledged two items of jewels i.e., ring and chain. P.W.1 categorically deposed that the appellant issued 2 receipts, in which one was torned completely and another was torned and produced before the respondent. It was marked as Ex.P2. Further, P.W.15, who treated the victim, was examined and he categorically deposed that the victim sustained injury on her cheek and wrist of her right hand. Therefore, the prosecution categorically proved the case and the Trial Court rightly convicted the appellant.

8. Heard Mr.V.Parthipan, learned counsel appearing for the petitioner



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and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent.

9. P.W.1 and P.W.2 are husband and wife. P.W.3 also belong to the same village of P.W.1. According to the victim, she pledged 2 items of jewels with the appellant shop called Shri Vigneshwar Pawn shop. She categorically mentioned the date of pledging the jewels as 03.05.2016 and 14.08.2017. After payment of entire amount to redeem the jewels, when the victim asked for return of jewels, she was directed to come another day. On the date of occurrence viz., 01.09.2017, the victim went to the shop of the appellant and she was given one item of jewel and again asked her to come another day. It was questioned by the her that after payment of the entire amount, why the jewels are not returned to her. Immediately, the appellant slapped her on her cheek and also twisted her right hand, due to which, her bangles were broken and an injury was caused on her right wrist. In order to prove the same, the prosecution had examined P.W.1 to P.W.15. P.W.1 and P.W.2 are husband and wife and P.W.3 is another eye witness who belong to the same village of P.W.1. Though, there are contradictions between P.W.1 and P.W.2, they corroborated each other and proved the occurrence that the appellant slapped her on her cheek and twisted



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her right hand, due to which, she sustained injury on her cheek and also on her right hand wrist.

10. The learned counsel for the appellant vehemently contended that the prosecution failed to prove whether the appellant is the owner of Shri Vigneshwar Pawn shop or not. It is immaterial to prove the same, since whether or not the appellant is the owner of the shop, it is true that the victim went to the shop, asking for return of jewel, which was mortgaged; the appellant slapped her and he also twisted her right hand. P.W.2 and P.W.3 are eye witnesses to the occurrence. It is also proved by P.W.15, who treated the victim. The Doctor categorically deposed that when he was working as Assistant Civil Surgeon, in Government Hospital at Harur, on 01.09.2017, the victim came to the hospital and told that she was attacked by the appellant, due to which, she sustained injury on her cheek and right wrist. He also issued wound certificate, which was marked as Ex.P4. Therefore, the prosecution categorically proved the offence punishable under Section 323 of IPC.

11. Insofar as the offence under Section 3(1)(r)(s) of SC/ST (POA)



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Act, 2015 is concerned, the prosecution failed to prove that the appellant had knowledge about the caste name of the victim. In this regard, it is relevant to extract the provision of Section 8(c) of SC/ST (POA) Act, 2015, which is as follows,

“ 8 (c) the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved”.

Thus, it is clear that the appellant must have knowledge about the caste name of the victim. That apart, though P.W.1 to P.W.3 deposed that the appellant scolded her in filthy language by using her caste name, they failed to depose that what are all the words used by him. Except P.W.1 to P.W.3, other witnesses who were eye witnesses to occurrence, turned hostile. Therefore, this Court felt that the prosecution failed to prove the charge under Section 8(c) of SC/ST (POA) Act, 2015.

12. In view of the above, the conviction under Section 8(c) of SC/ST (POA) Act, 2015, is hereby set aside. Insofar as the offence under Section 323 of IPC is concerned, the conviction is confirmed. However, the sentence for the offence under Section 323 of IPC is concerned, this Court is inclined to reduce the sentence from the period of one month to the period which was already



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undergone by the appellant, on condition that the petitioner shall pay a sum of Rs.25,000/- as compensation directly to the victim by way of Demand Draft and in case if the appellant could not give the compensation directly to the victim, he shall deposit the compensation amount to the credit of S.C.No.140 of 2017 on the file of the learned Principal Sessions, Judge, Krishnagiri, Krishnagiri District, within a period of two weeks from the date of receipt of a copy of this order. Failing which, the conviction and sentence imposed by the Trial Court will be restored automatically and the respondent Police shall secure the appellant to serve the remaining period of sentence imposed by the Trial Court.

13. If the appellant deposits the compensation amount before the Trial Court as stated above, the victim shall withdraw the said compensation amount by filing appropriate application. It is also made clear that the Trial Court, without ordering any notice to the appellant herein, shall permit the victim to withdraw the said amount.



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14. In the result, this Criminal Appeal is partly allowed.

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Speaking order/Non-speaking order

Index :Yes/No

Internet :Yes/No

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To

1. The Principal Sessions Judge, Krishnagiri, Krishnagiri District.
2. The Deputy Superintendent of Police,
Uthangarai Sub-Division,
Uthangarai,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN, J.

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