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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

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

Crl.A.No.257 of 2018

Aruchamy ...Appellant

-Vs-

State rep. by
The Deputy Superintendent of Police,
Anaimalai Police Station,
Valparai Sub-Division,
Erode District.
(Crime No.224 of 2014) ... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records relating to the judgment dated 11.04.2018 made in S.C.No.6 of 2015 on the file of the Principal District and Sessions Judge, Coimbatore, and set aside the same by allowing this criminal appeal.

For Appellant : Mr.D.R.Arunkumar

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This Appeal is directed as against the judgment dated 11.04.2018 made in S.C.No.6 of 2015 on the file of the Principal District and Sessions Judge,

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Coimbatore, thereby convicting the appellant for the offence under Sections 294(b), 323 and 3(i)(r) and (s) and 3(2)(v-a) of SC/ST (POA) Amendment Ordinance, 2014.

2. The case of the prosecution is that the accused and the victim are neighbours and there was some enmity between them with regard to construction of a compound wall. While being so, on 23.06.2017 at about 2.30 p.m., when the accused persons were whitewashing their compound wall on the western side by using white wash sprayer, the victim raised an objection. At that juncture, the accused, after knowing that the victim belong to SC/ST community, scolded the victim and intentionally insulted and intimidated with intent to humiliate the victim within public view. They also threatened the victim with dire consequences. Hence the complaint. On receipt of the complaint, the respondent registered FIR in Crime No.224 of 2014 for the offences under Sections 294(b), 323 and 3(i)(r) and (s) and 3(2)(v-a) of SC/ST (POA) Amendment Ordinance, 2014. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court for the charges under Section 294(b) IPC against the both the accused and Sections 323 and 506(ii) IPC and Sections 3(1)(r) and 3(2)(v-a) of

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SC/ST (POA) against the first accused and Sections 3(1)(r) and 3(1)(s) of SC/ST (POA) Amendment Ordinance, 2014 against the second accused.

3. In order to bring the charges to home, the prosecution had examined PWs1 to 11 and marked Exs.P1 to P10 as exhibits and the prosecution also produced material objects M.O.1 to M.O.3 and on the side of the appellant no one was examined and no document was marked.

4. On perusal of oral and documentary evidences, the trial Court found the first accused guilty for the offence under Sections 294(b) IPC r/w Section 3(2)(v-a), 323 IPC r/w Section 3(2)(v-a) and Section 3(1)(r) of SC/ST (POA) Amendment Ordinance, 2014, and imposed fine of Rs.1000/- for the offence under Sections 294(b) IPC r/w Section 3(2)(v-a) of SC/ST Act and sentenced him to undergo one year imprisonment and fine of Rs.1000/- IDSI for one month for the offences under Sections 323 IPC r/w Section 3(2)(v-a) of SC/ST Act and also sentenced him to undergo two years imprisonment and a fine of Rs.5000/- IDSI for two months for the offence under Section 3(1)(r) of SC/ST Act. In so far as the second accused is concerned, the trial Court acquitted the second respondent from all the charges.

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5. The learned counsel for the appellant would submit that the occurrence took place on 23.06.2014, whereas the complaint was lodged only on 25.06.2014 and there was absolutely no proper explanation by the victim for the belated complaint. PW1 deposed that immediately after occurrence, she was admitted in Government Hospital, Vettaikaranputhur, and she was referred to Government Hospital, Pollachi, for higher treatment therefore, there was delay in lodgement of complaint, whereas, on her complaint she stated that immediately after occurrence, she had gone to Government Hospital, Vettaikaranputhur and she was referred to Government Hospital, Pollachi, and admitted as in patient. However, the accused, being her neighbour, she did not lodge complaint on the same day. Therefore, there is absolutely no proper explanation by the prosecution for lodgement of complaint after two days from the date of occurrence.

6. The learned counsel for the appellant would further submit that PW10, the doctor, who treated the victim as out patient declared that the injury sustained by her is simple in nature, she was not referred any other hospital for higher treatment and she has not issued any wound certificate and she

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registered only accident register which was marked as Ex.P8. He would further submit that in so far as, the second accused is concerned, the trial Court found that there was no evidence to attract any offence under the SC/ST Act, though she has scolded the victim in filthy language by using her caste name.

7. Even according to the case of the prosecution the appellant did not use any single word to abuse the caste name of the victim. However, the trial Court found him guilty for the offence under SC/ST Act.

8. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent submitted that the prosecution clearly proved its case and the trail Court rightly convicted the appellant for the offence under Sections 294(b) IPC r/w Section 3(2)(v-a), 323 IPC r/w Section 3(2)(v-a) and Section 3(1)(r) of SC/ST (POA) Amendment Ordinance, 2014. The victim was examined as PW1 and her husband was examined as PW2, both their evidences not only corroborated with each other but also corroborated with the evidence of PW3 to 6, who are neighbours to PW1 and 2. They categorically deposed that on 23.06.2014, there was quarrel between the victim family and the appellant's family. The appellant poured lime line water while whitewashing

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their compound wall and there was no delay in lodgement of complaint since immediately after the occurrence, PW1 was taken to Vettaikaranputhur Government Hospital by PW2. PW10, the Doctor, who treated PW1 also recorded in the accident register about the occurrence which was marked as Ex.P8. The appellant, being her neighbour, the victim did not lodge complaint immediately and only after two days, she lodged complaint. However, the occurrence having taken place, due to which, the victim sustained simple injury on her both sides and the appellant also scolded her in filthy language and abused her by using her caste name. Therefore, the trial Court rightly convicted the appellant and he prays dismissal of the appeal.

9. Heard, the learned counsel for the petitioner and the learned Government Advocate (Crl Side) for the respondent and perused the materials available on record.

10. On perusal of the complaint lodged by the victim, which was marked as Ex.P1, revealed that the said occurrence occurred on 23.06.2014 at 2.30 p.m, she was taken to Government Hospital, Vettaikaranputhur, and thereafter, she was referred to Government Hospital, Pollachi, where she was treated as in

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patient. Therefore, she could not lodge complaint on the date of occurrence and she lodged it only on 25.06.2014.

11. Further, the person who registered FIR, was examined as PW9. She deposed that the complaint was lodged only after two days and the victim also failed to mention that the date on which the occurrence had taken place in the complaint. The Doctor, who treated PW1 was examined as PW10. she categorically deposed that on 23.06.2014, the victim came to the Government Hospital, Vettaikaranputhur, and she was treated as out patient since the injury is simple in nature. She was not given any wound certificate and she registered the case in accident register, which was marked as Ex.P8.

12. A perusal of Ex.P8 reveals that the victim sustained simple injury and further she was not treated by any other medicine However, Ex.P8 was not sent to the respondent. During investigation, it was obtained from the Doctor and it was marked as Ex.P8. Therefore, the prosecution failed to explain the delay of two days in lodgement of the complaint. That apart, there was contradiction in respect of lodging the complaint and treatment taken by the victim. However, on perusal of Ex.P8 revealed the occurrence was taken place on 23.06.2014 at 2.30 p.m., and she was treated as out patient.

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13. In so far as, the offence under SC/ST Act is concerned, even according to the case of the prosecution the appellant scolded the victim in filthy language and failed to mention any caste name. Further, the second accused scolded her in filthy language and also used her caste name. The trial Court found the second accused not guilty since no offence is made out to attract under SC/ST Act since no one has spoken about the specific overt act, whereas, the trial Court found the appellant guilty for not even using a single word with regard to her community.

14. Even PW1 did not whisper about the specific word uttered by the appellant. PW2, her husband, also did not even whisper about the word uttered by the appellant. In so far as, PW3 to 6 are concerned, who are eye witnesses to the occurrence, they did not even whisper about the word uttered by the appellant herein. Therefore, the prosecution failed to prove any offence under SC/ST Act against the appellant herein. When the trial Court found the second accused not guilty for the offence under SC/ST Act, the same benefit is available for the appellant also.

15. In view of the above, the prosecution failed to prove the charges under SC/ST Act and the appellant is acquitted for the offence under SC/ST

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Act. In so far as, the offence under Sections 294(b) and 323 IPC are concerned, the prosecution clearly proved the charges and the trial Court rightly convicted the appellant for the offence under Sections 294(b), 323 IPC. However, this Court is inclined to reduce the sentence imposed on the appellant for the offence under Section 323 IPC.

16. In view of the above, the sentence imposed for the offence is reduced from one year to the period which is undergone by the appellant on condition that the petitioner shall pay a sum of Rs.25,000/- as compensation directly to the victim, within a period of four weeks from the date of receipt of a copy of this order by way of Demand Draft, failing which, the sentence imposed by the trial Court shall stand restored. If the victim refused to receive the same, the appellant is directed to deposit the same to the credit of the trial Court and the same may be treated thereof as fine.

17. Accordingly, the criminal appeal is partly allowed.

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Index : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

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To

1.The Principal District and Sessions Judge,
Coimbatore.

2.The Deputy Superintendent of Police,
Anaimalai Police Station,
Valparai Sub-Division,
Erode District.

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