



CRL A No.214 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	02.11.2022
Pronounced on	:	17.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.214 of 2021

Visvanathan

... Appellant

Vs.

1.The State, represented by
Deputy Superintend of Police,
Gingee sub Division,
Viluppuram District,
Crime No.112 of 2018.

2.Lakshmi

... Respondents

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed on the appellant by the Judgment dated 30.03.2021 passed in Spl.S.C.No.37 of 2018 on the file of Sessions Court/Special court for SC & ST Act cases, Viluppuram.

For Appellant : Mr.S.Ganesh Kumar

For Respondent : Mrs.Saradha
Government Advocate



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J U D G M E N T

This Criminal Appeal has been filed to set aside the conviction and sentence imposed on the appellant by the Sessions Court/Special court for SC & ST Act cases, Viluppuram, passed in Spl.S.C.No.37 of 2018 dated 30.03.2021.

2. The respondent registered the case in Crime No.112 of 2018 for the offences originally under Sections 435 of IPC and later altered as Sections 435 of IPC r/w 3(2) (iii) of SC/ST (POA) Amendment Act 2015. After completing the investigation, police have filed the charge sheet before Sessions Court and Special Court for SC & ST Act cases, Viluppuram, since the offences are against the member of Schedule Caste community. The learned Judge taken cognizance of the charge sheet on file in Spl.S.C.No.37 of 2018.

3. The learned Special Judge after completing the formalities framed the charges against the appellant for the offences under Section 435 of IPC r/w 3(2) (iii) SC/ST (POA) Amendment Act, 2015.



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4. After framing the charges, in order to substantiate the charges framed against the appellant during the trial, on the side of the prosecution as many as 8 witnesses were examined as PW 1 to PW 8 and 10 documents were marked as Ex. P1 to P10 and 4 material objects were marked as exhibits.

5. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellant by questioning under Section 313 of CrPc, wherein he denied the same as false and pleaded not guilty. On the side of the defense, no oral and documentary evidence was produced.

6. Hearing the arguments advanced on either side and considering the materials, the trial court found guilt of the accused for the offence under Section 435 of IPC r/w 3(2) (iii) SC/ST (POA) Amendment Act, 2015 and the accused was convicted and sentenced to undergo 3 years of rigorous imprisonment and pay fine of Rs.1000/- in default to undergo



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further period of three months simple imprisonment for the offence.

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7. Challenging the said judgment of conviction and sentence passed by the trial court, the accused has filed the present appeal.

8. The specific case of the prosecution is that the second respondent/defacto complainant who is owning a land in Malacheri Village, cultivated paddy in her land and stored it in 25 gunny bags in her shed. On 07.02.2018 at about 7.30 pm, when the second respondent was returning home, the appellant set fire in the shed in which newly harvested paddy was stored. On seeing fire, the second respondent came to the place of occurrence, but the appellant took bicycle and escaped using a bicycle. Thereafter, the second respondent gave a complaint before the respondent police and the same was registered and charge sheet was laid.

9. The learned counsel for the appellant would submit that there was a previous enmity between the appellant and the second respondent herein. Therefore, the second respondent foisted a false case against him.



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He would further submit that no eye witness in this case said to have seen the alleged occurrence. Even in the complaint, the second respondent never told that the appellant set fire and even the eye witness have not stated that they saw the appellant, while he was setting fire to the second respondent's shed. The prosecution has not stated anything about the worth of paddy which was destroyed due to fire. He further submitted that the said incident alleged to have taken place on 07.02.2018 at about 7.30 pm. But the complaint was given only on the next day i.e., on 08.02.2018 at 9 am. The distance between the police station and the place of occurrence is hardly 6 hours. However, there is no explanation on the side of the prosecution for the delay of 13.30 hours in giving the complaint. The unexplained inordinate delay in filing the complaint is fatal to the case of the prosecution.

10. As per the FIR, there is no eye witness in the alleged occurrence and it is only after thought of the second respondent and her family members to settle the civil issue. He would further submit that investigation has not been properly carried out in a fair manner. The second respondent received a sum of Rs.1,80,000/- as compensation from



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the Government by saying that her house was damaged by fire and not his paddy. Hence, it is clear that no such occurrence took place. However, suppressing the fact, the investigation officer filed the charge sheet before the Court. The second respondent foisted a false case to get compensation. Further, the prosecution has not established whether the house of the victim was attacked by fire or the paddy of the victim got fire. The prosecution at one place states that her house got fire, but in another place she states that her paddy got fire. Therefore, there is a discrepancy in the case of the prosecution and they have not proved their case. Though, the charges framed on the appellant was originally under Section 435 of IPC, however, it was later altered as Sections 435 of IPC r/w 3(2) (iii) of SC/ST (POA) Amendment Act 2015 without any materials and alteration report sent to the Court only on 08.02.2018. Since, the offence is against a member belonging to Schedule Caste community, not less than a rank of a Superintendent of Police is alone has to prosecute the matter. But, there is no evidence to show that proper procedure was followed and only a competent officer has investigated the matter with authenticated authorization. Already an investigating officer recorded all the statement. When another investigating officer took the



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investigation on hand, he has not recorded a separate statement and he also made an endorsement that the earlier investigating officer was not competent to investigate the matter for the offence against SC/ST community. Further, he would submit that the prosecution failed to explain the motive and no documents have been produced for the same. The PW1 to PW4 are family members of the second respondent and they are the interested witnesses. There were houses nearby the shed, however no independent witness was examine to prove the alleged occurrence. Therefore, it is unsafe to record the conviction without any independent witness. The prosecution failed to prove its case beyond reasonable doubt that the appellant is the one who set fire on the shed of the second respondent in which she stored 25 gunny bags of newly harvested paddy. In the absence of the same, the trial Court failed to appreciate the evidence and wrongly convicted the appellant and therefore, the Judgment of the trial Court warrants interference of this Court.

11. The learned Government Advocate submitted that based on the complaint given by the second respondent, the investigating officer registered the case originally under Section 435 of IPC. Thereafter, it



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came to the light that the second respondent belongs to Schedule Caste community. Therefore, the case was altered to Sections 435 of IPC r/w 3(2) (iii) of SC/ST (POA) Amendment Act 2015. Since, it was found that the offence said to have committed by the appellant does not belong to SC/ST Community, the investigation has been shifted to the present investigating officer. The investigating officer after completing the formalities laid the charge sheet before the Sessions Court and Special Court for SC & ST Act cases, Viluppuram.

12. The PW1 and PW2 have clearly stated that they have stored the newly harvested paddy in their shed, to which the appellant set fire due to previous enmity. PW1 is the eye witness to the occurrence, who has stated that she purchased a land adjacent to the appellant's land. The appellant was interested to purchase the same land but he could not succeed. Subsequently, the second respondent purchased the land. The appellant has to pass through the second respondent's land to reach his own land. Due to that, there was a civil dispute between them. In order to take vengeance, the appellant set fire on the second respondent's shed in which 25 bags of newly harvested paddy was stored.



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13. PW2, who is the husband of the second respondent has clearly stated that they gathered paddy in 25 gunny bags under the padutha and kept it in their shed. The appellant set fire on the padutha using a match stick. Therefore, their entire shed including the paddy which was stored also got fire. On seeing PW1 crying, he went to the occurrence place, at that time the appellant escaped by using a bicycle. Due to that fire, they lost Rs.50,000/- worth property. Therefore, PW1 and PW2 clearly stated that they have identified the appellant one who set fire on the shed of the second respondent in which 25 gunny bags of paddy stored. Therefore, the evidence of PW1 corroborated with the evidence of PW2. The Tahsildar had also given a certificate that the second respondent belongs to Schedule Caste community and therefore, from the evidence it is clear that the prosecution has proved its case beyond reasonable doubt and there is no merit in the appeal and this appeal is liable to be dismissed.

14. Heard the learned counsel for both sides and perused the materials available on record.



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15. Admittedly, the appellant and second respondent are neighbours. The second respondent purchased a land which appellant wanted to purchase. The appellant has to pass through the second respondent's land to reach his own land. Due to that there was a enmity between them. In order to take vengeance, the appellant alleged to have set fire on the paddy which was covered by padutha in which 25 gunny bags of newly harvested paddy was stored. Due to the fire, the entire property and shed were damaged. Therefore, a complaint was registered against the appellant and subsequently, the Judgment of the trial Court was passed in the present case. In order to substantiate the case of the prosecution as many as 8 witnesses were examined and 10 documents were marked. Besides them, 4 materials objects were produced. PW1, who is the eye witness in this case as well as the victim, whose shed got fire by the appellant. She clearly stated that the appellant had set fire to her shed. When she cried, her husband came to the place of occurrence. But, on seeing her husband, the appellant escaped by riding a bicycle. Therefore, her husband had not seen the appellant while setting fire on the shed. Whereas, the PW2 evidence shows that at the relevant point of time, he saw her wife crying and the appellant was leaving the place of



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occurrence using a bicycle and except the appellant no one was there. The defence taken by the appellant is that no people in the nearby houses were examined. It is not the case of the second respondent that houses were there near the place of occurrence, except the PW1 and PW2 other independent witnesses have seen the occurrence. Therefore, under this circumstances, mere non-examination of any independent witness may not be a sole ground to discard the case of the prosecution. Careful reading of the evidence of PW1 and PW2 reveal that they have not specifically stated except PW1 and PW2, other independent witnesses also have seen the appellant while setting fire to the shed of the second respondent. Therefore, mere non-examination of the independent witness is not fatal to the case of the prosecution in the case and there is no independent witnesses said to have seen the occurrence. PW3 is the son-in-law of PW1 and PW2 and he is only a hearsay witness who came to the place soon after the occurrence, on information by PW1 and PW2 about the occurrence. PW4 is also a hearsay evidence and he is mahazer witness and PW6 is the Tahsildar, who gave Schedule Caste community certificate to the second respondent. This clearly shows that the second respondent belongs to Schedule Caste community. Therefore, the offence



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committed by the appellant falls under SC/ST Act. PW7 is also a Tahsildar who issued certificate to the appellant that the appellant does not belong to Schedule caste community. Since, the second respondent is from Schedule caste community and the appellant does not belong to Schedule caste community, offence under Section 435 of IPC r/w 3(2) (iii) SC/ST (POA) Amendment Act, 2015 is attracted. On combined reading of the entire materials, it is found that material objects are also there to prove that the appellant set fire on the shed of the second respondent. Due to which the entire property including 25 gunny bags of paddy got fired.

16. This Court finds that as a appellate Court and final Court of fact finding, re-appreciated the entire facts and evidence and finds that the prosecution has proved its case beyond reasonable doubt. The charges framed against the appellant for the offences under Section 435 of IPC r/w 3(2) (iii) SC/ST (POA) Amendment Act, 2015 are proved by the prosecution. Though the prosecution has not produced any independent witnesses to prove that the appellant is the one who set fire, the evidence of the second respondent is cogent, natural and consistent and it inspires the confidence of the Court. Therefore, there is no reason to interfere



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with the judgment of the trial Court.

17. Therefore, this Court does not find any perversity in the Judgment passed by the learned Sessions Court/Special court for SC & ST act cases, Viluppuram and there is no merit in the appeal and therefore, the appeal is liable to be dismissed. Accordingly, this Criminal Appeal is dismissed.

17.11.2022

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Index:Yes/No

To

1. The Sessions Court/Special court for SC & ST Act cases,
Viluppuram.
2. The Deputy Superintend of Police,
Gingee sub Division,
Viluppuram District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.214 of 2021**

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