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Crl.A.No.393 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.393 of 2020

1.Kandasamy
2.Kaliyan
3.Rathinam
4.Arumugam
5.Ayyappan
6.Ramalingam

... Appellants

Vs.

1.State, represented by
The Deputy Superintendent of Police,
Ulundurpet Police Sub Division,
Villupuram District.
(Elavasanur Kottai Police
Station Crime No.367 of 2017)

2.Nadesan

... Respondents

(R2 Suo Motu impleaded as per order in
Crl.A.393 of 2020 dated 06.10.2020)

Prayer: Appeal filed under Section 374(2) Criminal Procedure Code against the judgment and conviction passed in S.C.No.51 of 2018 dated 13.03.2020 by the Special Court for SC/ST Act cases, Villupuram, wherein the Appellants have been found guilty for offences under Sections 147, 148, 447, 427, 506(ii), 352 of I.P.C. and Section 3(2) (va) of the Schedule Caste/ Schedule Tribes (Prevention of Atrocities) Act – 2015.



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For Appellants : Mr.S.Ramajayam

For Respondents : Mr.R.Murthi for R1
Government Advocate (Crl. Side)

ORDER

The respondent police registered a case against the appellants in Crime No.367 of 2017 for the offences under Sections 147, 148, 294(b), 447, 506(ii) and 352 I.P.C. read with Sections 3(1)(r) & (s) and 3(2) (Va) of the SC/ ST (POA) Act, 2015.

2.After completing the investigation, they laid a charge sheet before the Special Court, since, the offence against SC/ ST Act. The learned Special Court took the case on file in S.C.No.51 of 2018. After completing the formalities, framed charges against the appellants for the offences under Sections 147, 148, 294(b), 447, 427, 506(ii) and 352 I.P.C. read with Sections 3(1)(r) & (s) and 3(2) (Va) of the SC/ ST (POA) Act, 2015.

3.In order to substantiate the above said charges before the trail Court, on the side of the prosecution, totally as many as 10 witnesses were examined as PW1 to PW10 and 7 documents were marked as Ex.P1 to Ex.P7. However,



no material object was exhibited.

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4.After completing the examination of the entire prosecution witnesses the incriminating circumstances culled out from the evidence of prosecution witness were put to the appellants by questioning under Section 313Cr.P.C., they denied the same as false and pleaded not guilty. On the side of the defence no oral and documentary evidence was produced.

5.On conclusion of the trial, heard the arguments advanced on either side and considering the materials, the trial Court found guilty of all the appellants under Sections 147, 148, 447 and 427(ii) read with 3(2) (Va) of the SC/ ST (POA) Act, 2015. 1st and 6th appellants were found guilty for the offences under Section 352 I.P.C, and 5th and 6th appellants were found guilty for the offences under Section 506(2) I.P.C.However, acquitted the appellants for the offences under Sections 3(1)(r) and 3(1)(s) of the SC/ ST (PoA) Act, 2015 and Section 294(b) I.P.C.the appellants were convicted and sentenced to undergo 2 years rigorous imprisonment for the offence under Section 147, 2 years for the offence under Section 148, 3 months for the offence under Section 447 I.P.C. and 2 years for the offence under Section 427. 5th and 6th



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appellants were convicted and sentenced to under go 2 years for the offence under Section 506(ii) and the 1st and 6th appellants were convicted and sentenced to under go 3 months for the offence under Section 352 and all the appellants were convicted and sentenced to under go 2 years for the offence under Section 3(2) (Va) of the SC/ ST (POA) Act, 2015 and pay fine of Rs.1,000/- each and in default to undergo 3 months imprisonment and all the appellants were acquitted for the offence under Sections 3(1)(r) and 3(1)(s) of the SC/ ST (POA) Act, 2015 and also acquitted for the offence under Section 294(b) I.P.C. in addition to Sections 3(1)(r) and 3(1)(s) of the SC/ ST (POA) Act, 2015 for the offence under Section 502(ii) and A1, A3 and A4 were acquitted for the offence under Section 352 I.P.C.

6.Challenging the said judgment of conviction and sentence all the accused have filed the present appeal before this Court.

7.The specific case of the prosecution is that on 13.08.2017 at about 9.00 a.m. all the appellants trespassed into the land of the de-facto complainant with knife and cut the sugarcane crops planted by the de-facto complainant in his land in S.No.24 and damaged the crops worth about Rs.60,000/-. Due to



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previous enmity in respect of Ellai Munniappan Swamy temple land and the respondent Police registered and investigated the case and laid a charge sheet.

8.The learned counsel for the appellants would submit that on the side of the respondent Police, prosecution examined totally 10 witnesses as PW1 to PW10 and 7 exhibits were marked as Ex.P1 to Ex.P7 and out of 10 witnesses all the prime witnesses PW1 to PW4 are relatives and they are only interested witnesses and therefore they concocted a shrug as against the appellants due to previous enmity. The land in S.No.24, does not belong to *de-facto* complainant and he has suppressed the said fact and also not established that the appellants cut and removed the sugarcane plants that were planted in nearly one acre of land. The Village Administrative Officer was examined as PW5, his evidence clearly shows that sugarcane plants were planted only in 5 Cents of the land which belongs to the temple. Therefore, the *de-facto* complainant has not approached the Court with clean hands. The *de-facto* complainant has stated as if the accused cut and removed the sugarcane plants cultivated in the entire one acre of land on a single day. It is not possible to cut and remove the sugarcane plants cultivated in the entire 1 Acre of land by the appellants alone. Therefore, the evidence of the Village Administrative Officer clearly falsifies



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the case of the *de-facto* complainant.

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9.Further, he would submit that there is no public view and all are only interested witnesses and there is material contradiction between the evidence of PW1 to PW4. The evidence of PW1 was not corroborated by the other witnesses and there was huge delay in filing the complaint and delay in filing the complaint which creates a doubt that the *de-facto* complaint had foisted a false case against the accused/ appellants and he would further submit that the appellants never uttered caste name. Except the *de-facto* complainant, his wife and daughter no outsiders were present and the appellants never humiliated the *de-facto* complainant's family members by uttering their caste name and further he would submit that the investigation got to be completed within the stipulated time by the Deputy Superintendent of Police. Whereas, in this case, they have not submitted the final report within the stipulated time and there is no material to show that they obtained extension of time and within the extended time they filed the charge sheet. It also creates a doubt on the complaint and also the Investigating Officer has not conducted a fair investigation and simply he filed charge sheet in a false case foisted by the *de-facto* complainant. All the prime witnesses are interested witnesses, the



conviction cannot be recorded only based on the evidence of the interested witnesses and in this case no one individual witness was also examined.

10.Further, he would submit that the *de-facto* complainant was not subjected to cross-examination and even though the PW1 had stated that the appellants scolded and the 1st appellant assaulted PW1's wife. She made a complaint when PW2 went to question the same at that time they were humiliated by uttering their caste names and when the *de-facto* complainant questioned the same he tried to beat and also scolded with filthy language and humiliated by uttering the name of their caste and whereas the other witnesses have not corroborated the evidence of de-facto complainant and there is a material contradiction which would go to the root of the case of the prosecution.

11.Further, he would submit that due to title dispute a civil suit is pending, the *de-facto* complainant has foisted a false case against the appellants and unfortunately the trial Court failed to appreciate the motive behind the false case foisted against the appellants and erroneously convicted all the



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accused as stated above which warrants interference of this Court.

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12.The learned Government Advocate (Crl. side) would submit that in this case, the *de-facto* complainant is a member of the Scheduled Caste community and the appellants are the non members of the Scheduled Caste community. The *de-facto* complainant cultivated the temple land about 1 acre in S.No.24 in the said village. The appellants having jealousy on that, gave trouble to the *de-facto* complainant and therefore there was a civil suit which is also pending. The *de-facto* complainant cultivated sugarcane in and about 1 acre and on 13.08.2017 at about 9.00 a.m., all the appellants trespassed into the said land and cut the sugarcane cultivated by the de-facto complainant. On seeing the same, PW3, the daughter of the PW1 and PW2 informed to her parents and immediately they went to the scene of occurrence and at that time all the appellants trespassed into the house and cut and removed the sugarcane which was cultivated by the de-facto complainant in the said land. PW2 questioned the same, the 1st appellant scolded PW2 in filthy language and also humiliated and beaten her on the chest and she immediately fell down. On seeing the same, PW3 went and prevented them and at that time the 1st appellant scolded her in filthy language and scolded by uttering her caste



name. When PW1 went and question the same, the 5th appellant drove the tractor of the 3rd appellant towards the PW1 and threatened with dare consequences and also all the appellants threatened them and left the place. The prosecution has proved its case beyond all reasonable doubt and the trial Court also rightly appreciated and convicted them.

13. Heard the arguments advanced by the learned counsel appearing on either side and perused the materials available on records before this Court.

14. As already stated, the specific case of the prosecution is that the *de-facto* complainant cultivated sugarcane in the temple land at about 1 acre in S.No.24. Due to the jealousy the appellants created the problem that a if the land belongs to them and there was a civil suit pending and in the meanwhile, in the year, 2017, all the appellants created trouble on 13.08.2017, at about 9.00 a.m. they trespassed in to the land of the *de-facto* complainant and cut and removed the sugarcane when the same was questioned by the *de-facto* complainant and their family members, all the appellants scolded them in filthy language and humiliated by uttering their cast name and also beat and threaten them.



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15. In order to substantiate the case of the prosecution, on the side of the prosecution totally 10 witnesses were examined and 7 documents were marked, out of 10 witnesses, the de-facto complainant was examined as PW1, the wife of the de-facto complainant was examined as PW2, the daughter of the de-facto complainant was examined as PW3. PW1 to PW3 are eye witnesses and also they are occurrence witnesses and they have clearly stated that on 13.08.2017 and at about 9.00 a.m. appellants trespassed into the land of the de-facto complainant and cut and removed the sugarcane plants which was cultivated in the temple land. When PW1 to PW3 questioned the same, they were attacked by the appellants and scolded them in filthy language.

16.A careful reading of the evidence of PW1 to PW3, they have clearly stated about the incidents that they have been scolded by the appellants in filthy language and by uttering the name of their caste. When PW1 questioned the same, the appellants drove the tractor on him and threatened. The son of PW1 was examined as PW4 and he has also corroborated the evidence of PW1 and the Village Administrative Officer was examined as PW5 who is independent witness, has clearly stated that he was informed by his assistant that on 13.08.2017, the appellants trespassed into the land of the *de-facto*



complainant and cut and removed the sugarcane plants cultivated in the temple land and also stated that the Deputy Superintendent of Police came and visited the place of occurrence and also enquired into the same. PW6 who is a villager and though he is not an eye witness, but, he is a hear say witness. But, soon after the occurrence, he came to know that there was a dispute between the *de-facto* complainant and the appellants. The Tahsildar, who gave the community certificates to the de-facto complainant and the appellants was examined as PW7 and who has clearly deposed that the de-facto complainant is a member of the Scheduled Caste community and the appellants are the non members of the Schedule Cast community. The other witnesses are the Police Officials and they have stated that on receipt of the complaint, registered a case and also investigated and filed charge sheet. Therefore, in this case PW1 to PW4 are occurrence witnesses and they have clearly deposed about the occurrence. As already stated the specific case of the prosecution is that the appellants trespassed into the land of *de-facto* complainant and cut and removed the sugarcane which was cultivated in the land and also stated that no other persons at the scene of occurrence. The *de-facto* complainant and his family members alone were there and also cases of this nature, no other public will come and support. Further, the PW1 to PW4 have categorically stated about



the incident and the same was not challenged by the defence during the cross-examination and admittedly, there was a dispute between the appellant and the *de-facto* complainant regarding the temple land and therefore, the appellants have trespassed into the land of the *de-facto* complainant and PW1 to PW3 clearly stated that the appellants uttered the caste name of the *de-facto* complainant. Though, PW1 to 4 are family members their evidence is cogent, consistent and there is no reason to discard their evidence. Since, the occurrence is not in the public view, the trial Court rightly acquitted the appellants for the offences under Section 3(1)(r) and 3(1)(s) of the SC and ST Act. However, the evidence reveals that the appellants and the victims are known persons and the appellants knowing the caste of the *de-facto* complainant, they scolded by their caste name and they humiliated the *de-facto* complainant by uttering the caste name. Therefore, from the evidence of PW5 Village Administrative Officer that there was a dispute between the appellants and the *de-facto* complainant and all the appellants trespassed into the land cut and removed the sugarcane cultivated by the *de-facto* complainant. Thereafter, even in the complaint the *de-facto* complainant has specifically mentioned the name of the appellants and in spite of the witnesses spoken about the specific act committed by each of the appellants and as already stated there is no



independent eye witness except PW1 to PW4. Though PW5, the Village Administrative Officer is not an eye witness, however, he has stated that his assistant informed him that the appellants trespassed into the land in which the *de-facto* complainant cultivated sugarcane and the appellants cut and removed the same. Even, PW6 also stated that though, he is not an eye witnesses, he has also stated that soon after the occurrence, he came to know about the dispute between both the appellant and the *de-facto* complainant. Therefore, from the evidence of PW1 to PW5 and also the evidence of Tahsildar and community certificate, this Court finds that the appellants are the non members of the Scheduled caste community and the *de-facto* complainant is the members of the scheduled caste community and from the evidence of PW1 to PW4 that 6 persons unlawfully assembled and trespassed into the *de-facto* complainant's land and they cut and removed the sugarcane cultivated in the land. When the same was questioned, they scolded with filthy language by uttering the caste name and also threatened with dire consequences.

17. Therefore, A1 to A6 were found guilty for the offences under Sections 147, 148, 447 and 427 and further, A5 and A6 also found guilty for the offences under Section 506(ii) and 352 I.P.C. and all the appellants found



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guilty for the offences under Sections 3(1)(r), 3(1)(s) and 3(2) (Va) of the SC/ST(PoA) Act, 2015.

18. The learned counsel for the appellants would submit that except previous motive regarding a civil dispute, the occurrence was said to have taken place on 13.08.2017. Except the interested witnesses, no other independent witnesses were examined.

19. A combined reading of the evidence of the prosecution witnesses, especially PW1 to PW7, all the witnesses have spoken about the incident in one way or the other way which would establish that there was a dispute between the appellant and the *de-facto* complainant regarding the cultivation of the temple land in S.No.24. Therefore, from the evidence of PW1 to PW4, on 13.08.2017, the appellant trespassed into the land and committed the charged offences and there is no independent witnesses and however, even the evidence of relative witnesses always need not be rejected in toto, because of that they are all relative witnesses. But, when the evidence of the relative witnesses are natural, consistent and cogent and when there is no specific reason to disregard or disbelieve the evidence of the relative witness and the Court can rely on the



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relative witnesses and the conviction can be recorded. In this case also, as already stated there was a dispute between both the parties regarding the cultivation of the temple land. As proved by the prosecution, one acre temple land in S.No.24 was cultivated by the *de-facto* complainant and civil dispute also pending. Meanwhile, the appellants trespassed into the land on 13.08.2017 in which sugarcane was cultivated by the *de-facto* complainant and caused trouble and when the same was opposed by the *de-facto* complainant and his family members, they were all attacked and humiliated and therefore, under these circumstances, this Court as an Appellate Court as a final Court of fact finding, while re-appreciating the entire evidence, this Court finds that the trial Court rightly appreciated the entire evidence and found the guilt of the appellants and convicted and sentenced them as stated above. This Court while re-appreciating the entire evidence does not find any perversity in appreciation of evidence by the trial Court and there is no ground to interfere with judgment of the trial Court. However, the sentence of 2 years under Sections 147, 148, 427 and 506(ii) I.P.C. are reduced from 2 years to one year and the remaining sentence of imprisonment are unaltered.



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20. With the above modification, this Criminal Appeal is dismissed.

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Index: Yes/ No
Speaking Order : Yes/ No
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To

1. Special Court for SC/ST Act cases, Villupuram.
2. The Deputy Superintendent of Police,
Ulundurpet Police Sub Division,
Villupuram District.
(Elavasanur Kottai Police
Station Crime No.367 of 2017)



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P.VELMURUGAN, J.

gba

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