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Crl.A.No.367 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

Coram:

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

Criminal Appeal No.367 of 2020

Senthil

... Appellant

Vs.

The State, represented by
The Deputy Superintendent of Police,
Sankari Sub Division,
Salem.

(Crime No.227 of 2013

Magudanchavadi Police Station)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed in Judgment dated 19.09.2019 made in S.C.No.15 of 2015 on the file of the learned Principal District and Sessions Court, Salem (Special Court for SC & ST (Prevention of Atrocities) Act, 1989).

For Appellant : Mr.D.Mario Johnson

For Respondent : Mr.R.Murthi
Government Advocate (Criminal Side)



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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 in Judgment dated 19.09.2019 made in S.C.No.15 of 2015 on the file of the learned Principal District and Sessions Court, Salem (Special Court for SC & ST (Prevention of Atrocities) Act, 1989).

2. The respondent police registered the case in Crime No.227 of 2013 for the offence under Sections 294(b), 323, 324, 506(ii) of IPC and Section 3(1)(x) of SC/ST (POA) Act, 1989. After completing the investigation, the respondent police altered the Sections from 294(b), 323, 324, 506(ii) of IPC read with Section 3(1)(x) of SC/ST (POA) Act, 1989 filed the charge sheet before the learned Judicial Magistrate No.2, Sankari. The learned Magistrate taken cognizance of the charge sheet on file in P.R.C.No.12 of 2014. The learned Magistrate after completing the formalities framed the charge against the appellant for the offence punishable under Section 209 Cr.P.C and committed the case to learned Principal Sessions Judge, Salem, since offences are exclusively triable by the Court of Session. The learned Principal Sessions Judge is the



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designated Judge for conducting the case filed under SC/ST Act and he took the case on file in S.C.No.15 of 2015.

3. The learned Sessions Judge after completing the formalities framed the charges against the appellant for the offences under Sections 324 and 506(ii) of IPC and Section 3(1)(x) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

4. After framing the charge, in order to substantiate the charge framed against the appellant, during the trial, on the side of the prosecution as many as 17 witnesses were examined as PW 1 to PW 17 and 15 documents were marked as Ex. P1 to P15. Despite, one material object was exhibited as MO1.

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, he denied the same as false and pleaded not guilty.



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On the side of the defense, no oral and documentary evidence was produced.

6. On completion of trial, hearing the arguments advanced on either side and considering the materials, the trial court found not guilty of the accused for the offence punishable under Section 506(ii) of IPC and the accused was acquitted from the said charge. However, the trial Court found guilt of the accused for the offence punishable under Section 324 of IPC and Section 3(1)(x) of SC/ST (POA) Act, 1989 and the accused was convicted and sentenced to undergo 2 years of rigorous imprisonment and pay fine of Rs.1,000/- in default to undergo further period of 6 months simple imprisonment for the offence under Section 324 of IPC and the accused was convicted and sentenced to undergo 2 years of simple imprisonment and pay fine of Rs.1,000/- in default to undergo further period of 6 months simple imprisonment for the offence under Section 3(1)(x) of SC/ST (POA) Act, 1989.

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



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8. The case of the prosecution is that the appellant belongs to Vanniyar Community and is not a member of the Scheduled Caste or Scheduled Tribe community. The defacto complainant is a member of Scheduled caste community. On 23.04.2013, the defacto complainant along with 15 workers were doing concrete work in the house of witness one Ganesan at Chinnappampatty. The accused who dislikes scheduled caste people doing construction works in the residential area of caste Hindu, saw the defacto complainant and his workers doing construction work in his area, developed enmity against them, insulted and assaulted the defacto complainant with hands on his cheeks and fisted on his abdomen by abusing him with his caste name. At that time, the defacto complainant fell on the heap of Blue Metal and sustained injuries. Subsequently, the defacto complainant was taken to Edappady General Hospital by 108 Ambulance and a case was registered against the appellant. Thereafter, this present appeal came to existence.

9. The learned counsel for the appellant would submit that soon after the incident and after investigation, the defacto complainant died.



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Therefore, he was not examined as witness. In the complaint, Ex.P1, the defacto complainant said to have put his thumb impression. However, the said thumb impression was not identified and at the time of filing the complaint, no witness was present. Since defacto complainant put his thumb impression, it is clear that he was an illiterate person and obviously he would not be able to understand, what was written in the complaint. Therefore, the genesis of the complaint itself is doubtful. Further, he would submit that PW1 witness himself stated that when he tried to attack the deceased, the deceased prevented him by hand, which resulted him to fall down. Therefore, he sustained injuries and the said injury was not caused by the appellant. The trial Court failed to consider the said fact and sentenced the accused to undergo two years of rigorous imprisonment for the offence under Section 324 of IPC, which is erroneous.

10. Further, he would submit that the Doctor who gave treatment to the deceased was examined as PW5 has stated that injury sustained by the deceased defacto complainant was simple in nature. Further, there is



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no corroborative evidence and the prosecution has not substantiated its case. Since the defacto complainant died before the commencement of the trial, and all the witnesses who have been examined are the relatives of the defacto complainant and they are the interested witnesses, have supported the case of the prosecution. Some of the witnesses have turned hostile and not supported the case of the prosecution. He further submitted that no individual witnesses were examined in this case to corroborate the evidence of the prosecution. The appellant has not committed any offence as alleged by the prosecution and the trial Court failed to appreciate the evidence that there is no individual witness and corroborative witness found in this case. The eye witnesses those who have supported are PW1, PW4, PW8 to PW10 who are only the interested witnesses.

11. He further submitted that conviction cannot be recorded based on the interested witnesses, when there is no corroborative and individual witnesses are found. Therefore, the Judgment of the trial Court is perverse and liable to be set aside and this appeal has to be allowed.



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12. Per contra, the learned Government Advocate (Criminal Side) would submit that the appellant belongs to Non-member of Schedule caste community. The defacto complainant is a member of Scheduled caste and Scheduled Tribe community. On 23.04.2013, the defacto complainant along with 15 workers were doing concrete works in the house of witness Ganesan at Chinnappampatty. On seeing the defacto complainant and his workers doing construction work, in the residential area of caste Hindu, the accused who dislikes the scheduled caste people, developed enmity against them, insulted and assaulted the defacto complainant with hands on his cheeks and fisted on his abdomen by abusing him with his caste name. At that time, the defacto complainant fell on the heap of Blue Metal and sustained injuries. Subsequently, the defacto complainant was taken to Edappady General Hospital by 108 Ambulance.

13. Though, the defacto complainant subsequently died, in order to substantiate the prosecution, the workers those who were present during



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the alleged incident were examined as witnesses. One of the witnesses was examined as PW1, who had seen the occurrence clearly spoken about the incident. PW4, who was working under the defacto complainant had also spoken about the incident. PW8 to PW10 who were also present at the time of the incident have also supported the case of the prosecution. Since the defacto complainant died even before the commencement of the trial, they could not examine the defacto complainant. However, the witnesses those who were present at the time of the occurrence place were examined and they have supported the case of the prosecution and corroborated the evidence. The Doctor, one who gave treatment to the defacto complainant was examined as PW5 and he has clearly spoken about the injuries sustained by him which is simple in nature. Therefore, the trial Court has rightly considered the entire materials and convicted the appellant under Section 324 of IPC and Section 3(1)(x) of SC/ST (POA) Act, 1989. There is no merit in this appeal and this appeal is liable to be dismissed.

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



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15. The Tahsildar, who issued community certificate was examined as PW12. The community certificate issued to the accused was marked as Ex.P7. As per the evidence of PW12 and Ex.P9, it is clear that the appellant belongs to non-member of Schedule caste community. The community certificate issued to the defacto complainant is marked as Ex.P8 which shows that the defacto complainant belongs to member of Schedule caste community. Further, the Ex.P3 is a complaint statement given by one Shanmugam/defacto complainant. Since he was no more at the time of the commencement of trial, the same was marked during the examination of prosecution witnesses. Ex.P3 states that on 23.04.2013, the defacto complainant along with 15 workers were doing concrete works in the house of witness Ganesan at Chinnappampatty. The accused who dislikes the scheduled caste people doing construction works in the residential area of caste Hindu, saw the defacto complainant and his workers doing construction work, cannot tolerate the same, started to insult and assault the defacto complainant with hands on his cheeks and fisted on his abdomen by abusing him with his caste name. At that time,



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the defacto complainant fell on the heap of Blue Metal and sustained injuries. Subsequently, the defacto complainant was taken to Edappady General Hospital by 108 Ambulance. Some of the workers who were doing the construction work were examined as prosecution witnesses. One of the witnesses namely Kaathaiye was examined as PW1. She clearly deposed that on the date of the occurrence, 10 members were working at the house of one Ganesan. At about 3.00 pm, when the defacto complainant was supervising the concrete work, the appellant came to the occurrence place. He called the defacto complainant using a singular word and started to humiliate him. Thereafter, he assaulted the defacto complainant with hands on his cheeks and fisted on his abdomen by abusing him with his caste name. At that time, the defacto complainant fell on the heap of Blue Metal and sustained injuries.

16. PW4, who was present at the time of the occurrence also corroborated with the evidence of the PW1. PW8, 9 and 10 who were cited as eye witness have also corroborated the evidence of PW1 and PW4. Therefore, all the eye witnesses have categorically stated that the



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appellant humiliated the defacto complainant by uttering his caste name and assaulted him, due to which he sustained injuries. The Doctor who gave treatment to the defacto complainant issued wound certificate which is marked as Ex.P2 and copy of the accident register was marked as Ex.P14. From the evidence of PW5 and Ex.P2 and Ex.P14, the prosecution has proved that the defacto complainant namely Shanmugam sustained injuries which is simple in nature. Further, from the evidence of PW1, PW4, PW8, PW9 and PW10, the prosecution has proved that the appellant, who is a non-member of Schedule caste or Schedule tribe community humiliated the defacto complainant, who is a member of Schedule caste by uttering his caste name in the presence of other witnesses. Therefore, offence committed by the appellant is punishable under Section 3(1)(x) of SC/ST (POA) Act, 1989.

17. This Court as an appellate court, while re-appreciating the entire evidence, as final Court of fact findings, it finds that the appellant has committed the offences under Section 324 and Section 3(1)(x) of SC/ST (POA) Act, 1989. The trial Court has rightly appreciated the facts



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and evidence and convicted and sentenced the appellant for the above said offences. Therefore, this Court does not find any perversity in the Judgment passed by the learned Principal District and Sessions Court, Salem (Special Court for SC & ST (Prevention of Atrocities) Act, 1989). and there is no merit in the appeal and therefore, the appeal is liable to be dismissed.

18. Accordingly, this Criminal Appeal is dismissed.

16.12.2022

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Index: Yes/No

To

1. The Principal District Sessions Court, Salem (Special Court for SC & ST (Prevention of Atrocities) Act, 1989).
2. The Deputy Superintendent of Police,
Sankari Sub Division,
Salem.
4. The Public Prosecutor Officer, High Court, Madras
5. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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