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CRL A No.361 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2022

Coram:

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

Criminal Appeal No.361 of 2020

1. Kathirvelu

2. Raja

... Appellants

Vs.

The State by the
Deputy Superintendent of Police
Tiruchengode Sub-Division
Crime No.242 of 2015
Tiruchengode Police Station
Namakkal District

... Respondent

Prayer : Criminal Appeal filed under Sections 374 (2) of Criminal Procedure Code, praying to call for the records relating to the conviction and sentence imposed in the Judgment dated 25.08.2020 made in S.C.No.93 of 2018 on the file of the learned Sessions Judge, Special Court for Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, Namakkal and set aside the same.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.R.Murthi

Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the conviction and sentence imposed in the Judgment dated 25.08.2020 made in S.C.No.93 of 2018 on the file of the learned Sessions Judge, Special Court for Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, Namakkal.

2.The respondent police registered the case in Crime No.242 of 2015 against the appellants and one another for the offence under Sections 294(b), 324 and 323 IPC @ 294(b), 324 and 323 IPC read with Section 3(1)(X) of SC/ST Act, 1989 and after completing the investigation, laid charge sheet before the Jurisdictional Magistrate. Since the offences involved in this case are exclusively triable by the Court of Sessions, the case was committed to the Principal District and Sessions Court, Namakkal and the same was taken on file in S.C.No.93 of 2018 and after establishment of the Special Court, made over to the Special Court for Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, Namakkal. The learned Sessions Judge after completing



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the formalities, framed the charges against the first accused/A1 for the offence under Sections 294(b), 324, 323 read with 34 IPC and 3(1)(X) of SC/ST (POA) Act and as against second accused/A2 for the offences under Sections 323, 294(b), 324 read with 34 IPC and Section 3(1)(X) of SC/St (POA) Act.

3. After framing the charges, in order to prove the case of the prosecution, during trial before the trial Court, totally 12 witnesses were examined as P.W.1 to P.W.12 and 13 documents were marked as Exs.P.1 to P.13 and no material object was exhibited.

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



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5. On conclusion of trial after hearing the arguments advanced on either side and also considering the materials, the learned Sessions Judge, not found the guilt of the accused for the offences under Section 294(b) IPC and Section 3(1)(x) of SC/ST (POA) Act, 1989 and thereby acquitted them from the said charges. However, found the first accused/A1 guilty for the offences punishable under Sections 324 IPC and 323 IPC read with 34 IPC and convicted and sentenced to undergo one year rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 324 IPC; to undergo six months simple imprisonment and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 323 IPC read with 34 IPC. The learned Sessions Judge also found the second accused/A2 guilty for the offences punishable under Sections 323 IPC and 324 IPC read with 34 IPC and convicted and sentenced him to undergo six months simple imprisonment and to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 323 IPC; to undergo one year rigorous imprisonment and to pay fine of Rs.1000/- in default to undergo one



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month simple imprisonment for the offence under Section 324 IPC read with 34 IPC. Challenging the said Judgment of conviction and sentence, both the accused have filed the present appeal before this Court.

6. The case of the prosecution is that the appellants and the defacto complainant are neighbors. Regarding dispute over drawing of water from the Tap, on 04.12.2015 at about 5.30 p.m., the appellants attacked the defacto complainant with stones. Therefore, the defacto complainant sustained injuries and was admitted in the hospital and on the intimation given by the hospital authority, the respondent police, recorded the complaint statement of the defacto complainant and registered the case.

7. The learned counsel for the appellants would submit that there are material contradictions even from the beginning. In the original complaint, the defacto complainant has not stated anything about the humiliation of uttering caste name and subsequently, the same was introduced and there were improvised statements of allegations from stage to stage. Further, when the defacto complainant was admitted in the



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hospital, before the doctor he has stated that five known persons attacked him with stones, whereas in the original complaint/Ex.P.1, he has stated that three named persons attacked him and the FIR/Ex.P8 was also registered only against three named persons. But after investigation, the charge sheet was filed only against two named persons namely the appellants herein. The trial Court failed to appreciate the initial complaint given by the defacto complainant and the subsequent statements given before the earlier Investigating Officer/P.W.11. He would submit that there are material contradictions even in the number of persons alleged to have attacked the defacto complainant and the allegation of scolding of the defacto complainant with filthy language by using caste name is also doubtful. Unfortunately, the trial Court failed to appreciate the evidence properly. Though the trial Court acquitted the appellants from the charges under the SC/ST Act and Section 294(b) IPC, only based on the medical evidence, on the ground of sympathy, convicted the appellants for the other charges as stated above. Therefore, the appreciation of evidence by the trial Court is perverse which warrants interference.



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8. The learned Additional Public Prosecutor appearing for the respondent police would submit that the injured himself was examined as P.W.1 and he has categorically stated that the appellants scolded him with caste name and humiliated him in the public view and also caused injuries by pelting stones. The wound certificate/Ex.P.6 clearly shows that the injuries sustained by the defacto complainant are simple in nature and therefore, the evidence of the injured witness was corroborated by the medical evidence. Though the trial Court acquitted the appellants from the charge under the SC/ST Act and Section 294(b) IPC, rightly convicted the appellants for the other charges as stated above. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

9. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent police and also perused the materials available on record.

10. Admittedly, both the appellants and the defacto complainant are neighbors. Though the defacto complainant stated that due to water dispute, the appellants along with other accused attacked him with stones



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and caused injuries and also humiliated him by using his caste name, on a perusal of Ex.P.7/Accident Register wherein, the doctor who attended the defacto complainant, has made entry in the Accident Register and written the history of the case as spoken by the defacto complainant in which, it is mentioned that five known persons attacked the defacto complainant with stones on 04.12.2015 at about 5.30 p.m. Further, in the initial complaint/Ex.P.1 and FIR/Ex.P.8 also, it is mentioned as three persons attacked the defacto complainant and there is no allegation of offence under the SC/ST Act as pointed out by the learned counsel for the appellant. Even the manner of attack alleged to have made by the accused persons are entirely different between the complaint statement and the statement recorded under Section 161 Cr.P.C. by P.W.11/earlier Investigating Officer.

11. Therefore as stated above, on a perusal of records shows that there are material contradictions between the original complaint and the entries made in the medical records and also in the statement recorded under Section 161 Cr.P.C. and the prosecution has not explained the



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reason for the contradictions. Since it appears that the defacto complainant is an illiterate as he has only put his thumb impression in the complaint made before the respondent police/P.W.11, P.W.11 might not have reduced into writing as stated by P.W.1/defacto complainant in the original complaint and subsequently, he should have written otherwise while recording statement under Section 161 Cr.P.C.

12. In the cases of this nature, the approach of the police department itself is very peculiar in nature in this State. Further, the Accident Register would be made in the printed format, whereas in this case that was not done which also creates doubt that the prosecution has not properly dealt with the case from the beginning.

13. Once the Court gets doubt over the different version of statements of the defacto complainant as to whether the defacto complainant himself made such a statements or the police recorded the same in such a manner in order to satisfy any person for one or other reasons, the accused is entitled for the benefit of doubt.



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14. In this case, this Court finds that the trial Court has not properly appreciated the materials available on record. The trial Court instead of ordering for re-investigation, has conducted trial with the available materials. Once there are contradictions in the available statements and evidence, the accused is always entitled to get benefit of doubt. Under these circumstances, this Court finds that the appreciation of evidence by the trial Court is perverse and therefore, the benefit of doubt is extended to the appellants. This Court is not satisfied with the approach of dealing of the cases for the offence under the SC/ST Act by the police officials and also by the trial Court. Because of their attitude and non application of mind, they are helping some of the accused either directly or indirectly and in most of the cases, the accused are getting acquittal from the charge under the SC/ST Act on the ground of benefit of doubt.

15. With the above dissatisfaction, this Criminal Appeal is allowed. The appellants are acquitted from all the charges in S.C.No.93 of 2018 and the conviction and sentence imposed on the appellants in the Judgment dated 25.08.2020 in S.C.No.93 of 2018 on the file of the



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Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Namakkal, are set aside.

16. Bail bond, if any, executed by the appellants shall stand cancelled and fine amount if any paid by the appellants shall be refunded to the appellants.

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Index: Yes/No

To

1. The Special Court for Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, Namakkal
2. Deputy Superintendent of Police
Tiruchengode Sub-Division
Tiruchengode Police Station
Namakkal 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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