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CRL A No.499 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

Coram:

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

Criminal Appeal No.499 of 2021

Sivakumar

... Appellant

Vs.

State rep. by
Deputy Superintendent of Police
Maruvathur Police Station
Perambalur

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code praying to set aside the Judgment passed by Special Sessions Judge, Special Court of SC/ST (PoA) Act, Perambalur in Special Sessions Case No.30 of 2018 dated 17.09.2021 thereby acquit the accused.

For Appellant : Mr.A.S.Balaji

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)



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This Criminal Appeal has been filed challenging the Judgment passed by learned Sessions Judge, Special Court for SC/ST (PoA) Act, Perambalur in Special Sessions Case No.30 of 2018 dated 17.09.2021 and consequently acquit the appellant.

2. The respondent police registered the case in Crime No.201 of 2013 against the appellant for the offence under Sections 294(b), 323, 354, 506(i) IPC and after completion of investigation, laid charge sheet before the learned Judicial Magistrate, Perambalur in C.C.No.08 of 2014 for the offences under Sections 294(b), 323, 354, 506(i) IPC and subsequently, it was transferred to the Additional Mahila Court, Perambalur and assigned C.C.No.13 of 2016. Subsequently, on the directions of this Court in the petition filed by the victim/defacto complainant in CrI.O.P.No.25717 of 2004 dated 19.09.2014, the charge sheet was altered for the offence under Sections 323, 354, 337, 347, 498, 506(i) IPC and 3(1)(r), 3(1)(s) and 3(1)(w)(i) of SC/ST (PoA) and Section 4 of TNPWH Act. Since the case was exclusively triable by the Court of Session, it was transferred to Principal District and Sessions Court, Perambalur in Spl.S.C.No.30 of



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2018 and the learned Principal District and Sessions Judge, after completing the formalities under Section 207 Cr.P.C., framed the charges against the appellant for the offence under Sections 323, 354, 337, 347, 498, 506(i) IPC and 3(1)(r), 3(1)(s) and 3(1)(w)(i) of SC/ST (PoA) and Section 4 of TNPWH Act and since the offence is against woman and the victim is a member of the SC/ST Community, the case was made over to the Special Court for SC/ST (PoA) Act, Perambalur.

3. After framing the charges, in order to prove the case of the prosecution during trial before the trial Court, on the side of the prosecution as many as 14 witnesses were examined as P.W.1 to P.W.14 and 17 documents were marked as Exs.P.1 to P.17 and no material object was exhibited.

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



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5. On completion of trial and hearing the arguments advanced on either side and considering the materials, the trial Court acquitted the appellant for the offence under Section 498 IPC and 3(1)(r), 3(1)(s) of SC/ST (PoA), however, convicted the appellant for the offences under Sections 323, 354, 337, 347, Section 4 of TNPHW Act and Section 3(1)(w)(i) of SC/ST Act and sentenced to undergo Rigorous Imprisonment for 6 months for the offence punishable under Section 323 IPC; one year Rigorous Imprisonment for the offence punishable under Section 354 IPC; Three months Rigorous Imprisonment for the offence punishable under Section 337 IPC; One year Rigorous Imprisonment for the offence punishable under Section 347 IPC; One year Rigorous Imprisonment with fine of Rs.10,000/- in default to undergo six months Simple Imprisonment for the offence punishable under Section 4 of TNPHW Act; and one year Rigorous Imprisonment for the offence punishable under Section 3(1)(w)(i) of SC/ST (PoA) Act. Challenging the said Judgment of conviction and sentence, the accused has filed the present appeal before this Court.



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6. The learned counsel for the appellant would submit that there are lot of contradictions even from the original complaint made by the victim/defacto complainant and in the subsequent statement made before the Magistrate and also in the evidence when she was examined as P.W.1. Initially, the victim had not stated anything about the humiliation and the attack alleged to have been made by the appellant. Subsequently, during the statement made before the Magistrate under Section 164 Cr.P.C., she improvised her version of allegations and again during examination, she further improvised the allegations which clearly shows that the victim had not come out with a specific allegation and therefore, at every stage of the case, there was improvisation in her allegations. Further, the occurrence is alleged to have taken place on 10.11.2013, whereas the complaint was lodged only on 12.11.2013 and the FIR was registered on 15.11.2013 and there is no proper explanation for the delay in lodging the complaint and registering the FIR belatedly. He would further submit that after completion of investigation and after taking the charge sheet on file by the Judicial Magistrate, the victim/defacto complainant approached this Court for registering the case under the SC/ST Act and subsequently, she got



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compensation. He would submit that only in order to get the compensation, they made the complaint to be registered under the SC/ST Act. The original complaint would clearly show that no offence would fall under the SC/ST Act. The trial Court has failed to consider the contradictions and the improvised allegations made by the victim/defacto complainant at every stage of trial and wrongly convicted the appellant which warrants interference of this Court.

7. The learned Additional Public Prosecutor appearing for the respondent police would submit that the victim/ defacto complainant was examined as PW.1 and in her evidence, she has clearly deposed what had happened. Further, in the statement recorded by the learned Magistrate under Section 164 Cr.P.C. also, she has clearly spoken about the entire incidents. He would submit that the victim belongs to scheduled caste community and the appellant is the non member of scheduled caste community. The trial Court on finding that the alleged casteist slur was not made within public view as required under Sections 3(1)(r) and 3(1)(s) of the SC/ST Act, rightly acquitted the appellant/accused from the said



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charges. However, to attract Section 3(1)(w)(i) SC/ST Act, there is no need to utter castiest words in a public place, in public view. Once the person who is non member of the SC/ST Community, knowingly utters castiest words on the person who belongs to SC/ST community, automatically, the provisions under Section 3(1)(w)(i) SC/ST Act would attract. In this case, the trial Court rightly appreciating the evidence of the witnesses viz., P.W.1 to P.W.7 and the evidence of the doctor/P.W.12 and also the statement made before the learned Magistrate under Section 164 Cr.P.C., convicted the appellant as stated above. Therefore, there is no perversity in the order passed by the trial Court and there is no merit in the appeal and the appeal is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent police and also perused the material available on record.

9. The case of the prosecution is that the victim/defacto complainant is the member of SC/ST community and the appellant is the non member



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of SC/SC community and they know each other. The victim/defacto complainant is residing in Neduvasal Village, Perambalur District with her family and she was selling flowers near Perambalur Gandhi Statue and her husband was selling fruits. Five years before this incident, the appellant had followed her and tried to misbehave with her. When she informed the same to her husband, he had told her that he would see to it later. Thereafter, one year before this incident i.e. in the year 2012, a day before Pongal Festival, when the victim/defacto complainant was coming near Vasantham Hotel, the appellant with a malafide intention wrongfully restrained her and stated that he is interested in her for a long time and people in her community would have affair with other men and asked her to be with him atleast for one day and also threatened her with dire consequences. When she informed the same to her husband, her husband and her brother-in-law scolded the appellant and beaten him. The victim / defacto complainant also beaten him with slippers. Thereafter, the accused remained silent. One year later, on 10.11.2013 at about 6.30 p.m., when the defacto complainant was going to Maruthaiyaru to attend nature's call, the appellant followed her and by saying that he was interested in her for a



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long time and by asking let us spend time happily, the appellant put a towel around her neck and pulled her towards him and told that all the persons in her community will be like this and why she is not co-operating with him and uttered humiliating words insulting her caste. Thereafter, with the towel around her neck, dragged her to a pond and pushed her face inside the pond and threatened her with dire consequences due to which, the victim/defacto complainant sustained injury in her neck and got fainted. Subsequently, the daughter and sister-in-law of the victim/defacto complainant who were in search of the victim/defacto complainant, found her and taken her to the house and later, the defacto complainant's husband took her to the Government Hospital, Perambalur and while she was undergoing treatment, the police recorded her statement on 12.11.2013. Initially, the case was registered for the offence under Sections 294(b), 323, 354, 506(i) IPC. Subsequently, on 07.08.2014, when the defacto complainant came to Court for trial, she learnt that she should have given complaint about the abuse of her caste and therefore, she approached the Madurai Bench of this Court in Crl.O.P.No.25717 of 2004 and this Court by order dated 19.09.2014, gave a direction to enquire and register the



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case under SC/ST Act. Subsequently, as per the proceedings of the Superintendent of Police, the Deputy Superintendent of Police, Perambalur, investigated the matter and concluded that the appellant uttered humiliating words insulting the defacto complainant's caste and compelled her to act according to his wish and also threatened her with dire consequences. Therefore, the respondent police registered the case for the offence under the SC/ST Act and filed the altered charge sheet as stated above and the same was taken on file by the Special Court for SC/ST (PoA) Act, Perambalur, in S.C.No.30 of 2018.

10. The victim/defacto complainant was examined as P.W.1 and she has deposed that she is selling flowers and fruits along with her husband at the Perambalur Old Bus Stand and she belongs to Scheduled caste community and the appellant is the non member of Scheduled Caste community. The accused used to meet her husband often and he would come even when her husband is not there and when she asks why he is coming, he would reply in an evasive manner. While so, in the year 2012 during Pongal Festival, near Vasantham Hotel at Old Bus Stand, the



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appellant wrongfully restrained her and told that he is thinking of her for a long time and compelled her to come with him. When P.W.1/defacto complainant told him that not to talk like that, the appellant told her that in her caste all the women are like this and why she is not co-operating and scolded her to accompany him at least for one day. When P.W.1/defacto complainant told that she would tell this matter to her husband, he threatened her with dire consequences. Thereafter, P.W.1/defacto compensation told the entire incident to her husband. Subsequently, her husband and brother-in-law, near Vasantham hotel at Old Bus stand, scolded the accused and also beaten and threatened him. At that time, P.W.1/defacto complainant also beaten him with slippers. One year the appellant remained silent and after one year, keeping the said incident in mind, the appellant used to follow her to the rest room and also to the Market. Usually on Sundays, P.W.1/defacto complainant would return to her home by taking the 5.15 p.m. bus. On 10.11.2013, (Sunday) at about 6.15 p.m., P.W.1/defacto complainant went to Maruthayaru to attend nature's call. At that time, the appellant followed her and took a red towel from his head and tied it around her neck and tightened it. When she



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started shouting, the appellant shouted at her by asking how can she beat him with slippers and uttered obscene words by insulting her caste and also dragged her by pulling her hair and pushed her in a pond. Thereafter, tied her Saree Pallu around her neck and dipped her face inside the pond by telling her to die as a result, P.W.1/defacto complainant got fainted. Thereafter, her daughter and her sister-in-law brought her to the house and made her to sit on the cot and gave her some water and when she regained consciousness, she told the entire incident to them.

11. P.W.2 is the sister-in-law of P.W.1. She has deposed that on 10.11.2013 at about 7 p.m., when she was working in her house, P.W.1's daughter came to her house and told that her mother who went to the field to attend nature's call, did not return to her home and since it was very late, she asked her to accompany her to search her mother. Hence, P.W.2 along with the daughter of P.W.1 went to Maruthaiyar in search of P.W.1 and they found P.W.1 groaning unconsciously and thereafter, they brought P.W.1 to her house wherein, the daughter of P.W.1, washed P.W.1's face and gave her some water to drink and when P.W.1 gained conscious, P.W.2



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enquired as to what had happened for which, P.W.1 replied that the appellant beat her stating her caste and tied a towel around her neck. By the time, P.W.3/the husband of P.W.1 came home and they informed to P.W.4/nephew of P.W.1 and taken P.W.1 to the hospital.

12. P.W.3 is the husband of P.W.1. He has spoken about the earlier incident happened in the year 2012. Further he has spoken about the subsequent incident heard from her wife/P.W.1 and taking P.W.1 to the hospital along with P.W.4.

13. P.W.4 is the nephew of P.W.1 and he has spoken about the incident heard from P.W.1 and admitting her in the hospital.

14. P.W.5 and P.W.6 are the brothers in-law of P.W.1 and they have also spoken about the earlier incident happened in the year 2012 and subsequent incident heard from P.W.1 while she was taking treatment in the hospital.



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15. P.W.7 is the neighbouring shopkeeper of P.W.1. She has deposed about the incident taken place in the year 2012 and when the husband of P.W.1 was attacked the appellant, she separated them. Further she has spoken about the subsequent incident and visiting P.W.1 in the hospital during which, P.W.1 has showed scars in her neck to P.W.7 caused by the appellant.

16. P.W.1/defacto complainant, in her evidence has deposed everything what had happened to her and the continuous harassment meted out by her made by the appellant. The evidence of P.W.2 to P.W.7 and P.W.12/doctor who treated P.W.1/defacto complainant are corroborated with the evidence of P.W.1/defacto complainant. Further, the statements of P.Ws. 2, 3, 4, 9, 8 and the statement of the daughter of P.W.1 were also recorded under Section 164 Cr.P.C. and they have been marked as Exs.P.13, 11, 14, 15 and 16.

17. The contention of the learned counsel for the appellant is that in the original complaint, the victim has not stated anything about the humiliation, uttering castiest words and the physical assault but subsequently, she approached this Court by way of filing a petition in



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CrI.O.P.No.25717 of 2004 with improvised allegations to register the case under the SC/ST Act in order to get the monetary benefits. Normally when an offence in the nature of sexual assault is being made, the women in our country would not immediately come out to disclose the same to others or to lodge a complaint against the accused since they are very much afraid of the society rather than the life of modesty. In this case, the victim is an illiterate rustic village woman. Immediately after the incident, she was admitted in the hospital and the doctor/P.W.12 who gave treatment to her, has clearly deposed that the victim/defacto complainant was admitted in the hospital on 10.11.2013 and got treatment for 3 days as in patient and that there were abrasions in the chest and neck of the victim/defacto complainant. He has further deposed that the victim/defacto complainant had told him that a known person, attacked her by pushing her to the ground and by closing her mouth and twisting her arms. Though in the original complaint there was no mentioning about insulting the victim with her caste, in the evidence, the then Sub Inspector of Police/P.W.13 who had registered the case, has clearly stated that the complaint was not given in writing and the victim/defacto complainant had orally stated what had



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happened to her and the complaint was written by her/P.W.13 which shows that the police officials did not act in a fair manner in this case. Especially, when a complaint is made by SC/ST community people, some of the police officials are not helping the suppressed class people or to the society or to the needy people and they help only to the people who are with money power, muscle power and political power.



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18. This Court being an Appellate Court as a final Court of fact finding, it has to necessarily re-appreciate the entire evidence and to give its findings independently. Accordingly, this Court re-appreciated the entire evidence and gives its findings independently.

19. Therefore, a reading of the evidence of P.W.2 to P.W.7 and P.W.12/doctor clearly shows that the victim had suffered as stated by her in her evidence while she was examined as P.W.1 before the Court. But the police had not actually mentioned all the averments spoken by the P.W.1/defacto complainant and therefore, she approached the Madurai bench of this Court and got a direction and subsequently, the altered charge sheet was filed which clearly shows that some of the police officials are not acting in a fair manner especially, when it comes to SC/ST community people, as much as they can, they try to suppress the main words or allegations levelled against the accused. Some of victims are able to approach this Court and Supreme Court and get directions but unfortunately, most of the suppressed class people are not bale to approach this Court or Supreme Court for getting justice. This case is one of the good example that some of the police officials are not acting in a fair



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manner or not giving safeguard to the suppressed class people.

20. This Court finds that the appellant has committed the offences and the same have been proved with cogent evidence. Therefore, This Court does not find any good reason or ground to interfere with the Judgment of the trial Court.

21. Accordingly, this Criminal appeal is dismissed.

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P.VELMURUGAN, J

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To

1. The Special Sessions Judge, Special Court of SC/ST (PoA) Act,
Perambalur
2. Deputy Superintendent of Police
Maruvathur Police Station
Perambalur
3. The Public Prosecutor Officer, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

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