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CrI. A. No. 398 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Criminal Appeal No. 398 of 2016

1. E. Velmurugan
2. P. Pachai @ Pachiappan
3. S. Kakka Selvam
4. T. Kosu @ Sankar
5. N. Vadivel
6. P. Pavadai @ Chinnadurai
7. Elumalai
8. P. Subbrayalu @ Subramani
9. Pachaiappan
10. P. Danapal
11. S. Elumalai
12. D. Rajendran

.. Appellants

Versus

State of Tamil Nadu rep by
The Deputy Superintendent of Police,
Kiliyanur Police Station,
Villupuram District
(Crime No.406/2010)

.. Respondent

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure to call for the entire records comprised in Special S.C. No. 103 of 2015 and set aside the judgment dated 26.05.2016 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Villupuram District.



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For Appellants : Mr. Vimal B. Crimson
For Respondent : Mr. V. Meganathan
Government Advocate (CrI.Side)

J U D G M E N T

This Appeal had been filed against the judgment of conviction and sentence dated 26.05.2016 passed in Special Sessions Case No. 103 of 2015 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram.

2. The Appellants are arrayed as Accused Nos.1 to 12 in Special Sessions Case No.103 of 2015. After trial in the said case, by judgment dated 26.05.2016, the Appellants were convicted and sentenced by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram, as follows:-

Accused	Conviction under section	Sentence awarded
A1 to A12	3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989	To undergo simple imprisonment for one year each and to pay a fine of Rs.2,000/- each and in default to undergo simple imprisonment for three months each.



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Accused	Conviction under section	Sentence awarded
A1 to A12	147 IPC	To undergo simple imprisonment for one year each and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months each.
A1 to A12	148 IPC	To undergo simple imprisonment for one year each and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months each.
A1 to A12	324 IPC	To undergo simple imprisonment for one year each and to pay a fine of Rs.3,000/- each and in default to undergo simple imprisonment for three months each.

2.1. However, the Accused Nos.1 to 12 were not found guilty of the offence under Sections 294(b) and 506(ii) of the IPC and they were acquitted of the said offences as contemplated under Section 235(1) of Cr.P.C. The Trial Court ordered the sentences to run concurrently and has also granted set-off under Section 428 Cr.P.C. for the period of incarceration undergone by the Appellants/Accused Nos.1 to 12 during investigation/trial.

3. The brief facts, which are necessary for the disposal of this Criminal Appeal, are as follows:-

3.1. P.W.1-Thiru.Venkatesan is the father of P.W.2-Thiru.Kumaran.



The case of the Prosecution was that on 05.10.2010, around 8.15 p.m., P.W.2-Thiru.Kumaran and P.W.3-Thiru.Kajendiran had dinner at Omandur Reddiyar Mess, situated on Tindivanam to Pondicherry main road. After having dinner, when they were coming out of the mess, Accused-2 P.Pachai @ Pachaiappan, Accused-10 P.Danabal, Accused-11 S.Elumalai and Accused-12 D.Rajenderan picked up quarrel with them.

3.2. Such quarrel developed into fisticuffs against each other which had intensified into a riot like situation, whereby Accused-1 E.Velmurugan, Accused-2 P.Pachai @ Pachaiappan, Accused-3 S.Kakka, Accused-4 T.Kosu, Accused-5 N.Vadivel, Accused-6 P.Pavadi @ Chinnadurai, Accused-7 P.Elumalai, Accused-8 P.Subburaylu @ Subramani and Accused-9 T.Pachaiappan joined together and attacked P.W-1 to P.W-3 resulting in injuries to them.

3.3. In the course of the same transaction, Accused-2 abused P.W-2 and P.W-3 in filthy language, including the caste name of P.W-2 and P.W-3. Accused-1 hit P.W.4-Thiru.Rajavelu on the left shoulder, Accused-7 hit P.W-3 all over his body and Accused-9 beat P.W-2 on his left shoulder due to which P.W-2, P.W-3 and P.W-4 suffered injuries. They went to the Government



Hospital at Tindivanam, where P.W-10, Dr. Deepa, treated for the injuries suffered by them as outpatients and issued Wound Certificate under Ex.P-6, Ex.P-7 and Ex.P-5. During such treatment, P.W-5 Sengeni stated that some persons attacked him. P.W-6 Thiru.Elango deposed that they were assaulted by Accused-1 to Accused-3 and Accused-6 and P.W-2 to P.W-5 suffered injuries in the assault.

3.4. On the next day, by around 11 a.m., P.W-1 went to Kiliyanur Police Station, Villupuram District and lodged a complaint under Ex.P-1. P.W-12, the then Sub Inspector of Police, Kiliyanur Police Station, Villupuram District, registered the case in Crime No.406 of 2010 for the offences under Sections 147, 148, 294(b), 323, 324 and 506(ii) of IPC read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. He had forwarded the original FIR under Ex.P-10 to the learned Judicial Magistrate, Vanur, and copies of the same to the higher police officials, including the Superintendent of Police, Villupuram. The Superintendent of Police, Villupuram, by proceedings dated 06.10.2010 under Ex.P-11, nominated the Deputy Superintendent of Police. P.W-13 Thiru.B.Uthayakumar as Investigation Officer to investigate the case.



3.5. After receipt of the copy of the FIR under Ex.P-10 and the proceedings of the Superintendent of Police, Villupuram, under Ex.P-11, P.W-13 Deputy Superintendent of Police, Villupuram, proceeded with the investigation. He went to the scene of crime and prepared rough sketch under Ex.P-12 and observation mahazar under Ex.P-2 in the presence of witnesses P.W-7 Thiru.Iyyanar and P.W-9 Thiru.Selvamurugan. He had recorded the statements of the witnesses, P.W-1, P.W-2, P.W-3, P.W-4 and P.W-10. He also examined the Doctor who issued Accident Register copies under Ex.P-6, Ex.P-7 and Ex.P-5. He then arrested the Accused Nos.1 to 12 and based on the confession given by them in the presence of P.W-8 Rajendiran, Village Assistant and P.W-11 Kulothungan, Village Administrative Officer, he recovered M.O-1 under Ex.P-14. He had also recorded the statements of other witnesses namely P.W-5, P.W-6, P.W-7, P.W-8, P.W-9. After his transfer, P.W-14 Thiru. Murugesan, Deputy Superintendent of Police, proceeded further with the investigation and obtained the statements of P.W-11 Kulothungan and P.W-12 Jegadeesan. He completed the investigation and laid the final report before the Court of the learned Judicial Magistrate, Vanur. On filing of the final report under Section 173 of Cr.P.C by the P.W-14 Murugesan, the learned Judicial Magistrate, Vanur, had taken the final report on file as PRC No.22 of 20212 and summoned Accused-1 to Accused-12.



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3.6. On appearance of Accused-1 to Accused-12, copies were furnished to them under Section 207 of Cr.P.C. They were questioned regarding the ability to engage Counsel and the Accused were bound over to the Court of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the case was considered exclusively triable by the Court of Sessions.

3.7. On receipt of the case records in P.R.C. No. 22 of 2012, the learned Principal District and Sessions Judge, Villupuram, had taken the case on file and on appearance of Accused-1 to Accused-12 and hearing the learned Public Prosecutor and the learned Counsel for Accused-1 to Accused-12, framed the charges as mentioned above. Accused-1 to Accused-12 denied the charges and claimed to be tried. Therefore, the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram, had made over the case, which was also bound over to the Court of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989,



Villupuram.

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3.8. On appearance of Accused-1 to Accused-12, the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram, proceeded with the trial. To prove the charges, Prosecution had examined P.W-1 to P.W-14 and marked Ex.P-1 to Ex.P-16 and M.O-1.

3.9. After closing of the Prosecution evidence, Accused-1 to Accused-12 were examined under Section 313 (1) of Cr.P.C regarding the incriminating evidence against them. Accused-1 to Accused-12 denied the evidence and therefore, the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram, posted the case for defence witness.

3.10. Accused-9 was examined as D.W-1. In the evidence of the D.W-1, the complaint preferred by him against Accused-1 to Accused-12 were marked as Ex.P-1 and the FIR registered on the basis of Ex.D-1 was marked as Ex.D-2. After closing of the defence witnesses, the Prosecution and the defence were heard by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes



(Prevention of Atrocities) Act 1989, Villupuram.

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3.11. On assessment of the evidence and after hearing the arguments of the Prosecution as well as the defence, the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram, convicted and sentenced the Accused-1 to Accused-12 as mentioned above. Aggrieved by the same, Accused-1 to Accused-12 had preferred this Appeal.

4. The learned Counsel appearing for the Appellants would contend that the Trial Court failed to note that there was a case and counter by both sides against each other and that was not considered while passing the impugned judgment of conviction. This is also evident that the Investigation Officer as well as the trial Court, without application of mind, have prosecuted only the Appellants and not the Prosecution witnesses, against whom also, a counter case was registered. When there is a case and counter case, both has to be assessed on merit before passing a final order, but that was conspicuously absent in this case. The Trial Court also failed to appreciate that there was no evidence to establish the alleged occurrence whereby the civil rights of the Prosecution Witnesses were infringed.



5. The learned Counsel for the Appellants invited the attention of this Court to the charges framed against the Appellants and they are as follows:-

Accused	Charges framed against A1 to A2
A1	506(ii) of the Indian Penal Code, 1860
A1 to A9	Section 148 of the Indian Penal Code, 1860
A1, A7 & A9	Section 324 of the Indian Penal Code, 1860
A10, A11 & A12	Section 147 of the Indian Penal Code, 1860
A1 to A12	Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

6. During trial, the Prosecution had examined 14 witnesses as P.W-1 to P.W-14 and marked documents as Ex.P-1 to Ex.P-16 and material object M.O-1. When the Prosecution evidence was closed, Accused-9 in this case was examined as D.W-1. During his deposition, Ex.D-1 and Ex.D-2 were marked. Ex.D-1 is the complaint lodged before the Police by D.W-1 and Ex.D-2 is the copy of the printed FIR registered in Crime No.407 of 2010 by the very same Police. Unfortunately, no investigation was conducted in the counter case under Ex.D-2. When there is a case and counter, as per the Police Standing Orders, the Investigation Officer has to investigate both cases and place the material fairly before the Court by filing separate charge sheets. In this case, the case was originally registered as CSR (Community Service Register). Subsequently, as a second thought based on discussion between the



Prosecution witnesses, this case was registered on the complaint of P.W-1, who is the father of P.W-2. P.W-1 was not present in the place of occurrence at the time of occurrence. The alleged occurrence took place on the previous day in Omandur Reddiyar Mess. Whereas, the complaint was preferred by P.W-1 the next day by 11 a.m. under Ex.P-1. Thus, there was enormous delay in giving the complaint, which was not explained by the Prosecution. P.W-2 is said to be the victim and son of P.W-1. P.W-10, Dr. Deepa, who attended the injuries issued Ex.P-6. In any event, when it is a case and counter, two separate charge sheets have to be filed, but it was not done in this case. Therefore, the entire judgment of conviction and sentence passed against the Appellants stands vitiated.

7. The learned Counsel for the Appellants also submitted that the First Information Report is belated and it was conveniently made after discussion with the Prosecution witnesses 1 to 4. The case investigated by the Investigation Officer is under Crime No.406 of 2010. Whereas the complaint given by Accused-9 in this case was registered as Crime No.407 of 2010 and it was not investigated at all. There are material contradictions in the descriptions of the occurrence by each of the witnesses. There are material contradictions regarding the place of the occurrence as described by each of



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the witnesses and the time at which the alleged occurrence had taken place.

There is suppression regarding the attack on Accused-1 to Accused-12 by the witnesses. Originally, P.W.2 son of P.W-1 alleged to have sustained injuries on his head, for which he was admitted in the very same Government Hospital for observation. Accordingly, the case was also registered for the offence punishable under Section 306 of IPC. After obtaining order from the Court the investigation proceeded. Also, as per the proceeding of the Superintendent of Police, the Deputy Superintendent of Police was nominated as the Investigation Officer, as this was a case under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. When there are case and counter, the very same officer ought to have investigated both the cases in Crime Nos.406 & 407 of 2010 as per the Police Standing Orders. Whereas the case in Crime No.406 of 2010 was investigated by the Deputy Superintendent of Police nominated by the Superintendent of Police. Crime No.407 of 2010 was investigated by the Inspector of Police, Kiliyanur Police Station, Villupuram District.

8. The learned Counsel for the Appellants invited the attention of this Court to the judgment pronounced on 12.07.2023, in Crime No.407 of 2010 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases



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registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram. Whereas, the case in Crime No.406 of 2010, was disposed of on 26.05.2016. This is unacceptable inasmuch as the parties to the cases in Crime Nos. 406 and 407 of 2016 are similar and the events that are unfolded in both the case are identical. While so, the trial Court ought not to have delivered different judgment in connection with the same case, on different dates. Therefore, it is the contention of the learned Counsel for the Appellants that the judgment of the learned Trial Judge is perverse and is to be set aside. Further, in a case of this nature, the Investigation Officer has to obtain community certificate from the Tahsildar concerned and Tahsildars are also to be cited as witnesses to prove the community to which the injured Prosecution witness belong to. Here, no such procedure was adopted by the Investigation Officer. The Tahsildar is not at all cited as witness on the side of the Prosecution. Therefore, he seeks to set aside the judgment of conviction passed by the learned Trial Judge.

9. Above all, the learned Counsel for the Appellants submitted that in the connected case, registered based on the complaint of Accused-9, the witness herein stood trial before the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled



Tribes (Prevention of Atrocities) Act 1989, Villupuram, and by judgment dated 12.07.2023 the Prosecution witnesses in this case were acquitted.

10. In support of his contention, learned Counsel for the Appellants relied on the following rulings:

(i) In the case of ***Nathi Lal Vs. State of U.P*** in ***1990 Supp1 SCC 145***, the Hon'ble Supreme Court has held as follows:

“Recording of evidence – Claim of compensation – Court think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the argument but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case – Held, Evidence recorded in the cross case cannot be looked into. Nor can the Judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other – Appeal is allowed.”

(ii) In the case of the ***Lakhbir Singh & Anr. Vs. State of Punjab*** in ***2019 4 CriCC 98*** the Hon'ble Division Bench of the High Court of Punjab and Haryana has observed as under:

“While deciding each case, the trial court is required to rely upon the evidence recorded in that particular case. It is also necessary that the evidence recorded in the cross case cannot be looked into in the



other case so that he may not be influenced by whatever has been argued in the cross case. Meaning thereby, each case is required to be decide on the basis of evidence which has been recorded in that particular case without being influenced in any manner by the evidence or the arguments raised in the cross case. It is also necessary that the judgments are required to be pronounced by the same Court one after the other.”

(iii) In the case of *State of Karnataka Vs. Hosakeri Ningappa & Another* in **2012 0 ILR(Kar) 509** the Hon'ble Full Bench of the High Court of Karnataka has observed as follows:

“Criminal Trial – Case and counter case: Procedural irregularity in conducting Trial – Held, If the case and counter case are not tried simultaneously as held by the Supreme Court in the case of *Nathi Lal vs. State of U.P* reported in **1990 Suppl. SCC 145 : 1990 SCC (Cri) 638**, and in the case of *Sudhir and others vs. State of M.P. Reported in 2001 SCC (Cri) 387*, the proceedings ipso facto do not get vitiated. But, where the irregular procedure adopted by the Trial Court has caused prejudice to the Accused and has occasioned failure of justice, the proceeding and the trial vitiates. Otherwise, the proceedings are protected under Section 465 of the Code.”

11. Therefore, in the light of the above-cited rulings, the learned Counsel for the Appellants submitted that the judgment of conviction recorded by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram, is to be set aside.

12. Learned Government Advocate (CrI.Side) appearing for the



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Respondent submitted that except P.W-10, Dr. Deepa's evidence regarding the time of the occurrence, the Prosecution witnesses have cogently deposed evidence in support of the Prosecution case, thereby proving the Prosecution case through the evidence of the injured witnesses P.W-2 to P.W-4. Also, he would submit that the evidence of the injured witnesses has weightage before the Trial Court. Further, the learned Government Advocate (Crl.Side) invited the attention of this Court to the evidence of P.W-10, P.W-12, P.W-13 and P.W-14 as well as the evidence of D.W-1. In the cross-examination of D.W-1, he had denied the suggestion put to him by the learned Public Prosecutor that this case had been registered as an after thought to wriggle out from the allegations made against Accused-1 to Accused-12 by the Prosecution witnesses. Further, the learned Government Advocate (Crl.Side) submitted that the learned Judge had on proper appreciation of evidence, pronounced the judgment. That is why he had acquitted Accused-1 to Accused-12 for the offence under 294(b) and 506(ii) of IPC. The learned Trial Judge had convicted the Accused for the offence under Sections 147, 148, 324 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 based on acceptable material evidence produced by the Prosecution. The Appeal lacks merit and is to be dismissed.

Point for consideration:



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Whether the judgment of conviction dated 26.05.2016 recorded by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram District, in Special Sessions Case No.103 of 2015 is to be set aside and A1 to A12 to be acquitted?

13. Heard the learned Counsel for the Appellants and the learned Government Advocate (CrI.side) appearing for the Respondent. Perused the charges framed by the learned Trial Judge in Spl.S.C. No. 103 of 2015, the deposition of the Prosecution Witnesses 1 to 14 and the defence witness, D.W-1, documents marked under Ex.P-1 to Ex.P-16 and the judgment of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram District.

14. On consideration of the rival submissions and on perusal of the depositions of the witnesses and the judgment of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram District, it is found that there are material contradictions in the cross-examination. P.W-12 admits that the case was originally registered as CSR



(Community Service Register). In the cross-examination of P.W-1, the

Complainant, he admits that he was not in the place of occurrence. After seeing his son in the hospital he had preferred the complaint. He admits that the complaint was given the next day. To the pointed question whether P.W-1's son, P.W-2, is the Accused in the connected case in Crime No.407 of 2010, he feigns ignorance. P.W.10, Dr. Deepa states that injured witnesses had stated that they were attacked by 10 persons near the Omandur bus stand by 5.20 hrs in the evening. She states that injuries were simple in nature, and they were treated as outpatients. In the cross-examination of P.W.13, the Investigation Officer discussed the practice of fairly conducting investigations and laid a charge sheet fairly before the Trial Court. However, he feigns ignorance of the Police Station limit, which is found to be unacceptable. After completion of training in a Police Training College and after undergoing training on the job, one cannot claim ignorance of the Police Standing Orders. P.W-13 Thiru. B. Uthayakumar, Investigation Officer was nominated by the Superintendent of Police to carry out investigation in this case. The manner in which he conducted investigation is not fair and it cannot be accepted. It is found to be suppression of material evidence after taking oath as a witness before the Trial Court. P.W-14 Thiru.Murugesan, Deputy Superintendent of Police, who had completed the investigation, had no explanation for not citing



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the Tahsildar concerned, from whom the community certificate is obtained, as a witness. He also has no answer to which community or castes the Accused-1 to Accused-12 belong to or the caste or community of the injured victims. Even without disclosing or ascertaining the case of the persons who suffered alleged injuries, the case has been filed by invoking the provisions under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. This was a lapse on the part of the Investigation Officers P.W-13 and P.W-14.

15. The submission of the learned Government Advocate (Crl.Side) that the flaws in the investigation cannot be taken advantage of by Accused-1 to Accused-12 is hereby rejected. The lapses in this case are such that it affects the very credibility and basis for conducting the investigation especially without even knowing the community to which the injured witness belong to while invoking the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The Investigation Officer failed to obtain the caste certificate regarding the injured victims P.W-2 to P.W-4 and the caste certificate of the Accused-1 to Accused-6 from the Tahsildar concerned. Under those circumstances, the judgment of conviction recorded by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act



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1989, is found to be perverse. The trial is conducted only to acquit the Accused from the charges framed and this Court is not inclined to say anything further.

16. The next fallacy in this case is that there was a case and counter. The Investigation Officer has not even mentioned above the counter case in this case and filed the charge sheet only in the case registered against the Appellants. The trial Court also miserably failed to note that when there are case and case in counter, both have to be tried simultaneously. In this case, the Appellants herein were convicted and when a similar case registered against the prosecution witnesses was dealt with, they were acquitted. This is unheard of in Criminal Law jurisprudence. In the judgment cited by the learned Counsel for the Appellants in the case of *State of Karnataka Vs. Hosakeri Ningappa & Another* reported in *2012 0 ILR(Kar) 509* it was held that when case and counter cases have been registered, both cases ought to have been tried simultaneously and if in the earlier case evidence was closed, it ought to have been kept in abeyance till the trial in the connected case is completed. Here, the earlier judgment was pronounced in Spl.S.C.No.103 of 2012 dated 26.05.2016. Only after this appeal came up for hearing, the learned Counsel for the Appellants made a mention of the connected case. This Court had



directed the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, to dispose of the counter case and also directed the prosecution to produce the witnesses within the period of 15 days. The trial had been completed and the judgment was pronounced on 12.07.2023 acquitting the Accused who are the Prosecution witnesses in this case. Therefore, as rightly pointed out by the learned Counsel for the Appellants, there were flaws both by the prosecution as well as by the Trial Court in not adjudicating the case and the counter case together, thereby the credibility of the prosecution case is lost. The Accused-1 to Accused-12 in this case also suffered injuries. The materials regarding the same was not fairly placed by the Prosecution before the trial Court. The conviction recorded by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, is, therefore, liable to be set aside.

17. In the light of the above discussion, the point for consideration is answered in favour of the Appellants and against the Prosecution. The judgment of conviction recorded in Special Sessions Case No.103 of 2015, dated 26.05.2016 by the learned Sessions Judge, Special Court for Exclusive



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Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram District, is found perverse and the same is to be set aside.

In the result, **this Criminal Appeal is allowed**. The conviction and sentence imposed on the Appellants/Accused Nos.1 to 12 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 at Villupuram District, in Special Sessions Case No.103 of 2015 vide impugned judgment dated 26.05.2016, is hereby set aside. The bail bond, if any, executed by the Appellants shall stand cancelled. The fine amount, if any, paid by the Appellants in this Appeal is directed to be refunded to them.

27.07.2023

cda

Internet : Yes / No

Index : Yes / No

Speaking/Non-speaking order



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To

The Sessions Judge,
Special Court for Exclusive Trial of Cases
registered under the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act 1989,
Villupuram District.



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SATHI KUMAR SUKUMARA KURUP, J

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