



*Crl.A.No.474 of 2016*

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 15.06.2023**

**PRONOUNCED ON : 30.06.2023**

**CORAM :**

**THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN**

**CRL.A.No.474 of 2016**

M.Balaji

... Appellants / Accused

-Vs-

State of Tamilnadu,  
Rep. by Deputy Superintendent of Police,  
Kedar Police Station,  
Villupuram District.  
(Cr.No.71 of 2012)

... Respondent / Complainant

**PRAYER:** Criminal Appeal is filed under Section 374 of Criminal Procedure Code, praying to call for the records relating to the proceedings in Special S.C.No.128 of 2015 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989, Villupuram and set aside the order of conviction dated 31.05.2016 and set the appellant at liberty.

For Appellant : Mr.M.Devaraj

For Respondent : Mr.L.Baskaran  
Government Advocate (Crl.Side).



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## **JUDGMENT**

**WEB COPY** Convicted sole accused is the appellant herein.

2. The respondent police filed charge sheet against the accused punishable under Section 294(b), 352, 354 of IPC read with 3(1)(x) and 3(1)(xi) of the SC/ST (POA) Act. After the trial, the learned Special Sessions Judge for SC/ST (POA) Act, Villupuram, has convicted the accused, as under.

| <i><b>Sl.No.</b></i> | <i><b>Offence</b></i>                  | <i><b>Sentence</b></i>                                                                            |
|----------------------|----------------------------------------|---------------------------------------------------------------------------------------------------|
| 1                    | 294(b) IPC                             | To undergo SI for 2 months and to pay a fine of Rs.1,000/-, in default to undergo SI for 15 days. |
| 2                    | 352 IPC                                | To undergo SI for 2 months and to pay a fine of Rs.500/-, in default to undergo SI for 15 days.   |
| 3                    | 354 IPC                                | To undergo SI for 1 year and to pay a fine of Rs.3,000/-, in default to undergo SI for 3 months.  |
| 4                    | 3(1)(x) and (1)(xi)<br>SC/ST (POA) Act | To undergo SI for 1 year and to pay a fine of Rs.3,000/-, in default to undergo SI for 3 months.  |

The sentences are directed to run concurrently and hence, the appeal.

3. The learned counsel for the appellant/accused could contend that there is a delay and as per the evidence of PW1, offence under the SC/ST



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(POA) Act is not made out and there is no corroboration by the independent witnesses and furthermore, the alleged occurrence ought not to have taken place, since the distance between the two houses are too large for visibility and the suggestive case of the defence was not considered in the proper perspective and hence, prayed for allowing the appeal and acquitting the appellant.

4. The learned Government Advocate (Crl. Side) made submissions in support of the judgment of the Sessions Court.

5. Heard both and perused the records.

6. On perusal of the records, the case of the prosecution is that on 11.03.2012 at 11.00am at Kedar Village in Perumal Koil Street, when PW1, the victim viz., Parimala was feeding to her one year old son namely Mathesh, the accused was seeing the breast of her in a drunken mood and



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when PW1 asked the activity of the accused, the accused scolded her with filthy language and beat her in the cheeks and the accused outraged the modesty of PW1 by beating her in the chest and pushing her and the accused also scolded PW1 by using the words, “இருள தேவிடியா முண்ட” (Irula Prostitute widow) and thereby, the accused committed the offences punishable under Sections 294(b), 352 and 354 of the Indian Penal Code, 1860 r/w Sections 3(1)(x) and 3(1)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. The case of the defence is that PW2 obtained Rs.2,000/- as loan from the accused, that the accused demanded repayment and that a false complaint was given due to that previous enmity. On the side of the defence no witness was examined to prove the fact that the accused gave Rs.2,000/- as loan to PW2. Saying that a false complaint was given by PW2 using his wife-the victim, to escape from the repayment of a loan of Rs.2,000/- is unreliable.



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8. In order to prove the charges, the prosecution has examined PW1 to PW11 and marked Ex.P1 to P8 and on the side of the defence, no document has been marked. The sum and substance of the evidence of victim girl-PW1 is that when she was feeding to her child the accused was seeing her breast, that when PW1 asked about that, the accused scolded her by using the words, “கூதியையாடி பார்த்தேன்” (was I seen the sexual organ) and beat her in the cheeks and that she lodged a complaint under Ex.P1 before the police.

9. PW2-Kanniyappan, the husband of the victim is the hearsay witness and PW3-Bakkiam, another independent occurrence witness turned hostile. PW4-Manikandan, is the attestor of the Ex.P6-observation mahazar. PW5-Raja, another independent witness alleged to have seen the occurrence, has also turned hostile so also PW6-Palani. PW7-Ramamoorthy, is the Inspector of Police, who had received the Ex.P1-complaint and registered Ex.P3-FIR. PW9-P.V.Rajendiran, is the Thasildar who had issued community report for PW1 as the member of the Scheduled



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Caste Community while the accused is the non member of the Scheduled Caste community under Ex.P5. PW10-Pandiyan, is the investigation officer, who has conducted the investigation at the first level after the receipt of Ex.P8 proceedings from the Superintendent of Police, Villupuram, for nominating the investigation officer.

10. It remains to be stated that under Ex.P8, the investigation officer is named as Pandian-PW10 and not PW11-Pannerselvam, who had conducted further investigation and laid the charge sheet.

11. In order to sustain the prosecution under Section 3(1)(x) of SC/ST Act, twin ingredients are ought to be satisfied viz.,

(a) the accused should be a member of the non SC community, while the defacto complainant should belong to SC/ST community.

(b) The accused ought to have uttered caste word in the public place in a public view.

12. On the point that was raised by the defence counsel that Ex.P8



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was proceedings of the Superintendent of Police, Villupuram District for nominating the investigation officer for conducting the SC/ST case, is only issued to PW10-Pandian and not issued to PW11-Pannerselvam, this Court finds that further investigation carried on by PW11 who had laid the charge sheet is held to be qua illegal.

13. In this regard in ***K.Ragupathi Vs. State Represented by the Inspector of Police, Chennai***, reported in **2015 (1) LW (Crl) 137**, this Court has held as follows:

“(B) In the judgment reported in (2009) 3 MLJ (Crl) 1071 (SC-NOC) : (2010) 1 SCC (Cri) 683 in the case of State of M.P. Versus Chunnilal @ Chunni Singh, it is held that reading of Section 9 of the SC& ST (PA) Act, Rule 7 of SC & ST Rules 1995 and Section 4 of the Cr.P.C. jointly read would lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act, the investigation which is being made by a competent police officer in accordance with the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer.

(C) In the judgment reported in (2010) 2 Supreme Court Cases (Cri) 288 in the case of State of Punjab Versus Hardial Singh and others,



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following the judgment reported in (2010) 1 SCC (Cri) 683 supra held that the investigation done by police officer not specifically authorised in terms of Section 3 of the Act is illegal qua the offence relating to SC & ST (PA) Act but the investigation is not illegal in respect of of offence punishable under the provisions of IPC.

(D) In the judgment reported in 2007 (1) MLJ (Crl) 654 in the matter of Sambasivm and another Versus State, rep. by Deputy Superintendent of Police, Mannarkudi, the following judgments rendered in (2006) 2 M.L.J. (Crl) 463 and 2002 (4) ALTR in the matter of Viswanadhula Chittibabu v. State of A.P., learned single Judge of this Court held that investigation by police officer not specifically appointed under Rule 7 of the SC & ST Rules is illegal.

(E) Similarly, learned single Judge of this Court, in the judgment reported in 2009-2-L.W.(Crl.) 1347 in the matter of V.P.Kuppurao Vs. The Director General of Police, Tamil Nadu and others; and (2010) 1 MLJ (Crl) 247 in the matter of V.P.Kuppurao v. Director General of Police, Tamil Nadu Government DGP Office, held the same view.

(F) Therefore, it is clear from the above judgments of the Hon'ble Supreme Court and our High Court that when an investigation under SC & ST (PA) Act was done by an officer though holding the post of DSP is illegal when such officer was not appointed specifically under Rule 7 of the SC & ST Rules.

(G) In this case, as stated supra, admittedly, PW.16 to 18 did not state that they were specifically appointed under Rule 7 of the SC & ST (PA) Act. Therefore, in the absence of such evidence, it cannot be held that they were competent to conduct investigation against the accused punishable under the provisions of SC & ST (PA) Act and therefore, the



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charge levelled against the accused with the offence under Section 3(1)(x) & (xi) of the SC & ST (PA) Act is liable to be set aside.”

14. This Court has given anxious consideration for the submission made by the learned Government Advocate (Crl. Side) on the factual position.

15. On perusal of the oral evidence of PW1 in the chief examination I find that none of the ingredients of Sections 3(1)(x) and 3(1)(xi) of the SC/ST (POA) Act, has been attracted. PW1 in the chief examination has not whispered anything touching upon the said offence. The offence is alleged to have been taken place within the house and absolutely there is no public to witness the incident and such a offence is not attracted.

16. It remains to be further stated that in order to attract offence under Sections 3(1)(x) and 3(1)(xi) of the SC/ST (POA) Act, it should have taken place in a public place in a public view. As per the prosecution, the scene of occurrence is projected inside the house of the PW1 victim girl and



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furthermore, the PW1 in the cross examination has admitted that no one can see what is happening inside the house, since the entrance was very low and thus, this Court finds that the very geniuses of the incident is highly doubtful.

17. PW1 being the victim and PW2 is husband of the victim is hear say witness. Independent witnesses PW3, PW5 and PW6 produced by the prosecution have turned hostile. It remains to be stated that even the scene of occurrence was not clearly established by the investigation. The victim girl PW1 stated that the street is east-west street while the PW10 investigation officer states that the street is north-south and hence, I find that going by the evidence of PW1, none of the offence stated under the SC/ST (POA) Act is attracted and hence, I have no hesitation to hold that the alleged offence under the Special Act i.e Sections 3(1)(x) and 3(1)(xi) of the SC/ST Act, are not proved in the manner known to law.

18. With regard to the IPC offences under Sections 294 (b), 352 and 354 of IPC, the trial judge has categorically given a finding that the



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evidence of PW1 is believable. In this regard, the suggestive case of the defence as stated supra, assumes significance.

19. According to the defence, PW2 husband of PW1 had obtained Rs.2,000/- as loan from the accused and on demand for repayment, a false complaint has been given due to previous enmity.

20. It remains to be stated that there is a delay of more than two days in registering the FIR and further the PW1 has not whispered anything regarding the utterance of the caste word in the public place or utterance of caste word in the chief examination and she had stated that the accused has used the filthy language.

21. On a combined reading of the chief and cross examination of PW1 and PW2 and also taking note of the fact that all the independent witnesses viz, PW3, PW5 and PW6 having turned hostile, I find that the evidence of PW1 is not reliable and untrustworthy. Had there been any such



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incident in such a place, the neighbours PW3, PW5 and PW6 could have heard such incident

22. In ***Ramesh Chandra Vaishya Vs. State of Uttar Pradesh and Another***, reported in **2023 SCC Online SC 668**, our Hon'ble Supreme Court has held as follows;

“....Since the utterances, if any, made by the appellant were not “in any place within public view”, the basic ingredient for attracting section 3(1)(x) of the SC/ST Act was missing/absent. We, therefore, hold that at the relevant point of time of the incident (of hurling of caste related abuse at the complainant by the appellant), no member of the public was present.

18. ....We have noted from the first F.I.R. as well as the charge-sheet that the same makes no reference to the utterances of the appellant during the course of verbal altercation or to the caste to which the complainant belonged, except for the allegation/observation that caste-related abuses were hurled...”

23. Hence, I find that the defence case is more probable than the prosecution case and the alleged offence under IPC is not made out and the prosecution has failed to prove the charges framed against the Accused beyond reasonable doubt and giving the benefit of doubt, the



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appellant/accused is acquitted of all the charges. Consequently, the conviction and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under SC/ST (POA) Act, Villupuram, in Special Case No.128 of 2015, dated 31.05.2016, as against the accused/appellant herein is set aside. Fine amount is ordered to be refunded. Bail bond stands cancelled. The Criminal Appeal is allowed.

**30.06.2023**

Index: Yes / No  
Speaking/Non-Speaking order  
Neutral Citation: Yes/No.  
*ars*



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**RMT. TEEKAA RAMAN, J.**

*ars*

To

1. The Sessions Judge,  
Special Court for Exclusive Trial Cases Registered  
under the SC & ST (POA) Act,  
Villupuram.
2. The Deputy Superintendent of Police,  
Kedar Police Station,  
Villupuram District.
3. The Public Prosecutor,  
High Court, Madras.

**Pre-delivery Judgment made in**  
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