



Crl.A.No.251 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2023

Pronounced on : 20.03.2023

CORAM

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.251 of 2020

1.Surya
2.Rajkumar
3.Lakshmanan

... Appellants/Accused 1, 3 & 5

/versus/

State by
The Deputy Superintendent of Police,
Ulundurpet Sub Division, Inspector of Police,
Villupuram District.

... Respondent / Complainant

Prayer:- Criminal Appeal is filed under Section 374 (2) r/w.382 of Cr.P.C., praying to call for the records and to allow the above appeal and set aside the judgment of conviction dated 10.03.2020 passed in Spl.S.C.No.16/2019 by Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989, Villupuram, and acquit the appellants herein.

For Appellants : Mr.N.Balaji

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)



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JUDGMENT

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The appellants herein are A1, A3 and A5 in Spl.S.C.No.16 of 2019 on the file of the Special Sessions Court for Exclusive Trial of Cases registered under SC/ST (Prevention of Atrocities) Act, Villupuram.

2. Based on the complaint given by one Veerasamy, a case has been registered in Crime No.354 of 2018 by the respondent police on 12.11.2018 for the alleged offences under Sections 147, 148, 341, 294(b), 324, 506 (ii) of I.P.C., and 3(1)(r)(s), 3(2)(Va) of SC/ST (POA) Act, 2015. Investigation was done by the respondent and Final Report was filed. Wherein, one of the accused called Vinod, being a juvenile, his case was split up and adjudicated by the Juvenile Justice Board. The remaining accused stood trial. The Trial Court framed charges under Sections 147, 148, 341, 294(b) 324, 506 (ii) I.P.C., r/w. 34 I.P.C., and Sections 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015 as against the accused A1 to A3 and A5.

3. To prove the charges, the prosecution examined 9 witnesses, marked 11 exhibits and one Material Object. The Trial Court on appreciation of evidence



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convicted the appellants/Accused 1 to 3 & 5 for the following offences:-

<i>Sl.No.</i>	<i>Offence convicted</i>	<i>Fine/punishment imposed</i>	<i>Default sentence</i>
1.	147 of I.P.C.	Fine of Rs.1,000/- imposed	In default to undergo one month S.I.
2.	148 of I.P.C.	Sentenced to undergo 3 years R.I.	In default to undergo 3 months S.I.
3.	341 of I.P.C.	Fine of Rs.500/- imposed	In default to undergo 3 months S.I.
4.	3(1)(r) of SC/ST (POA) Amendment Act, 2015	Sentenced to undergo 3 years R.I., and Fine of Rs.1,000/-	In default to undergo 3 months S.I.
5.	3(1)(r) of SC/ST (POA) Amendment Act, 2015	Sentenced to undergo 3 years R.I., and Fine of Rs.1,000/-	In default to undergo 3 months S.I.

In respect of charge for the offences under Sections 324 I.P.C., and 3(2) (va) of SC/ST (POA) Amendment Act, the Trial Court found 5th accused / Lakshmanan not guilty and acquitted him, however convicted the accused 1 to 3 alone for the said offences as under:-.

<i>Sl.No.</i>	<i>Offence convicted</i>	<i>Fine/punishment imposed</i>	<i>Default sentence</i>
1.	324 of I.P.C.	Sentenced to undergo 3 years R.I., and Fine of Rs.1,000/-	In default to undergo 3 months S.I.
2.	3(2)(va) of SC/ST (POA) Amendment Act, 2015	Sentenced to undergo 3 years R.I., and Fine of Rs.1,000/-	In default to undergo 3 months S.I.

4. The case of the prosecution unraveled through its witnesses is as



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On 06.11.2018 at about 5.30 p.m., Veerasamy (PW.1) an Auto driver was proceeding to Poo.Malaiyanur village via Keelapalayam, Ulundurpet Taluk with two passengers by name Selvam (PW.2) and Vanitha (PW.7). The Auto was intercepted by Surya (A1), Ramkumar (A2), Rajkumar (A3), Vinod (A4) (juvenile split up from the main case) and Lakshmanan (A5). They enquired Veerasamy (PW.1) about his place of residence. On coming to know that he hails from a Harijan colony, they started abusing him by his caste name and threatened him that he should not hereinafter enter into their area. The 1st accused, Surya hit PW.1 with the cricket stump on his head. Ramkumar (A.2) attacked him on the left shoulder. Lakshmanan (A.5) attacked him on the right shoulder and abused him. After abusing him using his caste name, PW.1 was let off PW.1 was taken to the hospital and got admitted in the Government hospital in Ulundurpet. The duty doctor examined him and issued Accident Register [Ex.P5]. He was treated for the head injury and pain on the shoulder. The First Information Report was registered on 12.11.2018, the 7 day after the occurrence. On registering F.I.R., the Deputy Superintendent of Police took up the investigation, prepared Observation Mahazar [Ex.P2] and Seizure Mahazar [Ex.P4]. The accused were arrested and their



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statements were recorded. Based on the disclosure made by the accused, the cricket stumps 4 in number were recovered under Seizure Mahazar [Ex.P4]. The 4 stumps were marked as M.O.1 series. The F.I.R., [Ex.P7] initially registered for the offences under Sections 147, 148, 341, 294(b), 324, 506 (ii) of I.P.C., r/w. 3(1)(r)(s), 3(2)(Va) of SC/ST (POA) Act, 2015 altered into Sections 147, 148, 341, 294(b) 324, 506 (ii) I.P.C., r/w. 34 I.P.C., and Sections 3(1)(r)(s) and 3(2)(va) of SC/ST (POA) Amendment Act, 2015 and the alteration report marked as Ex.P11. The Investigating Officer, who conducted the investigation based on the authorization issued by the Superintendent of Police vide proceedings dated 12.11.2018 [Ex.P8] deposed as PW.9.

5. On appreciating the evidence, the Trial Court held that the incident has taken place on 06.11.2018, but the respondent registered the complaint only on 12.11.2018. However, the complaint of PW.1 regarding the incident had been recorded in C.S.R.No.475 of 2018 on the day of incident therefore, there is no reason to disbelieve the case of the prosecution for the reason that F.I.R., was registered belatedly. Regarding the contradiction found in the Accident Register and the version of the prosecution witnesses about number of persons attacked him, the Court below has considered the oral evidence of PW.1 as more reliable



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than the Accident Register [Ex.P5], which says that PW.1 was admitted in the hospital with the history of assault by three unknown persons contrarily in the F.I.R., registered after 6 days has stated that he was attacked by 5 persons with particulars of the 5 persons. The Trial Court in respect of the said discrepancy pointed out by the defence, has considered that the complainant has come to know about the identity of the other two persons later. Therefore, those two names has been included in the F.I.R., and this is not fatal to the prosecution case..

6. In the appeal under consideration before this Court, the learned counsel for the appellants submitted that the delay of six days in registering the F.I.R., has caused undue prejudice to the appellants. The *de facto* complainant had exaggerated the incident to wreak vengeance against the appellants and he has given the complaint with embellished facts. His evidence and the evidence of other prosecution witnesses from the inception bristles with contradiction as far as the incident alleged to have been taken place on 06.11.2018. The earliest document is the Accident Register, which was prepared on 06.11.2018 at about 7.40 p.m., at Government hospital, Ulundurpet by PW.5. While in the Accident Register [Ex.P5], the doctor has recorded that PW.1 Veerasamy was brought to the hospital by his brother Venkatesan allegedly assaulted by three known persons



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using stumps at around 5.30 p.m., near Keelapalayam bridge. The doctor has noticed lacerated wound on the right temporal region and complaint of pain on the right shoulder. Contradictory to this earliest documentary evidence, PW.1 has deposed that he was attacked by five persons with cricket stumps and caused injuries on his head and both the shoulders.

7. The learned counsel for the appellants would further submit that when the exact utterance of the word, which has caused insult to PW.1, has not been consistently spoken by the witnesses. Hence their evidence in this aspect is doubtful. The Trial Court has not considered the same while convicting the appellants for the alleged offences under SC/ST Act. The learned counsel for the appellants also submitted that the recovery of stumps marked as M.O.1 series, based on the confession statement of the accused persons is highly doubtful, since PW.4 had deposed that 5 cricket stumps were recovered, but only four were produced before the Court. Further the witness for the recovery belongs to the community of PW.1 and therefore, he is a witness interested in getting conviction for the accused persons who belong to other community.

8. The learned Government Advocate (Crl.Side) for the State submitted



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that the delay in registering the F.I.R., has been explained by Investigating Officer and same has been accepted by the Court. Therefore, merely on the ground of delay in registering the F.I.R, the trial will not get vitiated. Regarding the contradiction between the documentary evidence [Ex.P5] and the ocular evidence of PW.1, PW.2 and PW.7/ Lalitha, it is submitted that though PW.7 belongs to the community of PW.1, PW.2 belongs to other community. A neutral person has identified the accused persons and deposed they were present on 06.11.2018 and attacked PW.1. Therefore, there is no error in the judgment of the Trial Court in over looking the entry made in the Accident Register.

9. Regarding the utterance of objectionable word attracting offence under SC/ST Act, the learned Government Advocate (CrI.Side) for the State submitted that the occurrence took place in the road and the intention to restrain wrongfully the auto of the PW.1 was to know his community. After knowing that he belongs to SC community, they have threatened him not to enter into their village. This is sufficient to attract the offences under Sections 3(i) of the SC/ST Act. That apart, PW.1 has stated the word uttered by Raj Kumar (A3) and Lakshmanan (A5). Since the injured victim has identified the persons who have



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spoken the offensive word, the Trial Court had convicted them of the offences under SC/ST (POA) Act.

10. According to the prosecution, the incident took place on 06.11.2008 at about 5.30 p.m. It is stated that after sustaining injury, Veerasamy (PW.1) was taken to the Government hospital, Ulundurpet and on receipt of memo, C.S.R., came to be registered on the same day. But the copy of C.S.R. not produced before the Court. The statement of PW.1 to the police given on 07.11.2018 clearly discloses the offences under SC/ST Act and which requires mandatory registration of F.I.R., immediately and it ought to have been forthwith forwarded to the learned Judicial Magistrate. Unfortunately in this case, the police has not registered the F.I.R., immediately. The Investigating Officer in the cross examination has said that due to heavy work load, he did not register the F.I.R., immediately. This statement does not carry any merit in view of the fact that the earliest document [Ex.P5] which is the Accident Register states that three known persons have attacked PW.1 with cricket stumps, due to which, the victim sustained pain in the right shoulder and lacerated wound on the temporal region whereas the version after 7 days is quite contrary to the facts found in the Accident Register. Two persons were added in the statement alleged to have been given by PW.1. Further



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when the doctor had not noticed any injury on the right shoulder or complaint of pain on the left shoulder of PW.1. PW.1 as well as PW.2 in their deposition have deposed that Lakshmanan (A5) attacked PW.1 with hand, leg and cricket stump on the left shoulder. PW.2 Selvam had not stated anything about the objectionable utterance except implicating A1 for hitting PW.1 with cricket stump saying that PW.1 is from Adi Dravida community and should not be allowed to enter into the village. PW.2 has also implicated Ramkumar (A2) for hitting PW.1 with cricket stump on the right shoulder. In the cross examination, he has stated that apart from Veerasamy (PW.1) auto driver, there were three other persons including him, whereas, Vanitha (PW.7) who is one of the eye witnesses to the occurrence and travelled in the auto has deposed that she and PW.2 alone were travelling in the auto of PW.1. She belongs to the community of PW.1. However, she also does not support the case of PW.1 regarding utterance of objectionable word except saying that on coming to know that PW.1 belongs Poo.Malaiyanur colony, Ram Kumar (A2) hit PW.1 on the head and Surya (A1) hit him on the right shoulder. They also damaged the auto. Here again, the Court could see the contradiction between PW.1 and PW.7 regarding the person who caused the head injury while PW.1 says that it was the 1st accused Surya hit him on the head PW.7 deposed that it was the



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2nd accused Ramkumar (A2) hit PW.1 on the head. Further, PW.7 has introduced a new fact that the accused persons damaged the auto. This new fact is introduced by PW.7 in the chief examination, but has no corroborated. While PW.1 has only stated that the accused persons threatened him not to enter their village and if he enters again, they will burn the auto, whereas PW.7 has exaggerated and stated that the accused person damaged the auto also.

11. The contradiction and exaggeration as found and pointed out as above coupled with delay in registering the F.I.R., clearly show that the prosecution case as spoken by the witnesses is not true and the prosecution version has not been proved through reliable evidence. The unexplained delay of seven days in registering the F.I.R., and non production of C.S.R which alleged to have been registered on the next day of the occurrence and the correction and over writing found in Ex.P1 to show as if it was received on 07.1.2018, also the entry in Accident Register [Ex.P5] regarding number of persons involved in the crime, the additional two persons which is found in the F.I.R., as well as in the deposition of PW.1., besides the fact that only four stumps were marked before the Court under M.O.1 series, whereas PW.1 had stated that five stumps were used to attack him. PW.4 / Elumalai, who is signatory to Seizure Mahazar, also deposed that five



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cricket stumps were recovered. These are vital contradictions and lapse in the case of the prosecution which makes their case doubtful.

12. As far as the injury (i) namely the lacerated injury on the temporal region, the contradiction between PW.1 and PW.7 about who caused the said injury is fatal to the prosecution case. Except PW.1, neither PW.2 nor PW.7, who alleged to have been present at the time of occurrence, had heard the objectionable utterance by the accused persons to attract offence under Section SC/ST Act. In the instant case the chaff and grains are so finely mixed, which makes the Court difficult to separate the chaff from the grain and appreciate the worthiness of the prosecution witnesses. The exaggeration, contradiction and embellishment renders them wholly unreliable. Therefore, the finding of the Trial Court is liable to be set aside.

13. Accordingly, this Criminal Appeal is allowed. The judgment of the Trial Court is set aside. The appellants are set at liberty. Fine amount, if any paid by the accused shall be refunded to them. Bail bond if any executed by the accused shall stand discharged.



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Index : Yes/No
Speaking order/Non-speaking Order
rpl

To,

- 1.The Special Court for Exclusive Trial of Cases under SC/ST (POA) Act, 1989,
Villupuram.
- 2.The Deputy Superintendent of Police,
Ulundurpet Sub Division, Inspector of Police,
Villupuram District.
- 3.The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN.J.,

rpl

Pre-Delivery Judgment made in
Criminal Appeal No.251 of 2020

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