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CRL A No.302 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal No.302 of 2020 &
CrI.M.P.No.4710 of 2020

Senkeni @ Govindan

... Appellant

Vs.

The State of Tamilnadu,
Rep., by Deputy Superintendent of Police,
Vikravandi Police Station Cr.No.304 of 2018
Villupuram District.

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, calling for the records relating to the proceedings in Special S.C.No.6 of 2019, 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, set aside the order of conviction dated 10.07.2020 and set the appellant at liberty and pass such further or other orders.



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For Appellant : Mr.E.V.Chandru
Legal Aid Counsel

Mr.M.Devaraj

For Respondent : Mr.R.Murthi G.A.(Crl., Side)

J U D G M E N T

This Criminal Appeal has been filed against the judgment of conviction and sentence imposed on the appellant/accused in Session Case No.6 of 2019, dated 10.07.2020, on the file of learned Sessions Judge, Special Court for Exclusive Trial of cases registered under the Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989 Villupuram.

2. The case of the prosecution is as follows:-

The appellant/accused stood charged for the offence punishable under Section 323 IPC, 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, Sections 3(1)(4) and 3(1)(S) of SC & ST Act and also under Section 3(2)(Va) of the SC & ST Amendment Act 2015.



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3. The allegation against the appellant/accused is that on 01.09.2018, at the place of occurrence i.e., land of the accused near Ayyanar Temple in Mattur Village attacked PW-1 by Velikathan stick on his left shoulder, right hand fingers and caused simple injuries, attacked PW-2, Sumathy, wife of PW-1 and harassed her, knowing fully well that the witnesses PWs1&2 belonged to Irular community, used abusing language against PW-1 by saying “இருளர் தேவுடியா பையா”. It is stated by the prosecution that the appellant/accused was having a brick kiln and witnesses PWs 1 & 2 were working in his brick kiln and that the appellant/accused gave a sum of Rs.20,000/- to PW-1 towards advance for manufacturing brick in his brick kiln on the agreement that wages for a brick was at the rate of 50 paise per brick; that accepting the terms, PWs 1 & 2 were working in the brick kiln of the appellant/accused. The accused used to give Rs.1000/- per week. The balance amount was deducted from the advance amount; that the appellant/accused requested for deployment of manpower for brick cutting of ஜதை; that PW-1 arranged the manpower as requested by the appellant/accused and the accused paid Rs.80,000/- as advance for four ஜதைகள் (Res.20,000/- for



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each ஜதை) and the manpower were paid Rs.1000/- per week and the balance amount was deducted from the advance amount. In the meanwhile, the lorry belonging to the appellant/accused was seized by the financier for the default in payment and hence, the appellant/accused sought for help from the PW-1 and the PW-1 also gave a sum of Rs.20,000/- by cash and 2½ sovereign of gold. The witnesses were continuously working in the brick kiln of the appellant/accused. The accused delayed the repayment of debt on some reasons or the other. On 17.05.2018, the appellant/accused called PW-1 over phone as stated that he would return the 2½ sovereign gold and also the cash. PW-1 could not go on that day, however he went to the place of appellant/accused after two days and demanded the cash and jewels and at that time, the appellant/accused attacked PW-1 with Velikathan Thadi as MO-1, on his back and on his left shoulder and the appellant/accused used abusive language “இருளர் தேவுடியா பையா உனக்கு எண்டா பணம் கொடுக்க வேண்டும்”. PW-2, the wife of PW-1 came to the rescue of PW-1 and questioned the appellant/accused for attacking PW-1. The accused also used abusive language against her and beat on her back.



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PW-1 went to one Mr.Ramesh, who is the President of the Irular Community Association and he drafted the complaint (Ex.P1), which was given by the PW-1 in Vikravandi Police Station on 21.05.2018. On receipt of the complaint from PW-1, one Mr.Ramesh Sub-Inspector of Police, was on duty at 6.00 pm assigned CSR number and thereafter PW-13, Sub- Inspector of Police registered the complaint on 23.05.2018 at 7.30 pm and the FIR is marked as Ex.P.9. Thereafter, PWs-1 & 2, underwent treatment in Mundiyaambakkam hospital.

4. In order to prove the case of the prosecution as many as 14 witnesses were examined and 17 documents were marked as Exs.P.1 to Ex.P.17 and one material object was marked as MO-1. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the A1/appellant and questioned under Section 313 Cr.P.C. He denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was marked.



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5. Before the Trial Court, it was pleaded on behalf of the appellant/accused that there was a delay in registering of the complaint, which is not permissible for an offence under the Special enactment like Prevention of Atrocities Act. There is a variation in the place of occurrence. The prosecution witnesses have stated that the occurrence had taken place near Ayyanar Temple, whereas in the rough sketch, the place of occurrence is shown as brick kiln of the accused. Since the mahazar witnesses have turned hostile, seizure of material object has to be doubted. Witnesses PWs-3,4,6 & 7 are relatives to PWs 1 & 2 and they are interested witnesses and no reliance can be placed on their evidence.

6. The Trial Judge has considered all the contentions put forth by the appellants and has come to a conclusion that the reasons given by the PW-1 for the delay that as he was not educated, he went to one Mr.Ramesh, who was the President of Irular community Association and he prepared the complaint and it is their habit and practice that they used to bring to the notice of the association about the issues they faced and hence, the delay occurred is acceptable. Though the mahazaar witnesses



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have turned hostile, PW-14, the Investigating Officer has categorically stated in his evidence that he visited the place of occurrence and prepared the observation mahazaar and the rough sketch and that the place of occurrence was near Ayyanar temple and in the brick kiln of the accused. Though the witnesses Pws.3, 4, 5, 6 & 7 are interested witnesses and their evidence is cogent and they have narrated the occurrence cogently and their evidence is corroborative in nature. The Trial Court has come to the conclusion that the witnesses have deposed about the incident naturally and reliable manner. The medical evidence also corroborates the evidence of PWs 1 & 2. On the side of the appellant/accused another ground was raised before the Trial Court that the Sub-Inspector of Police, who assigned the CSR to the complaint given by PW-1 was not examined before the Trial Court as a witness and that it is incorrect and illegal to have registered CSR for an offence under Special Enactment. The Trial Court has concluded that though there are procedural irregularities, it cannot be stated that the occurrence did not happen and that the delay in registering the complaint has not affected the case of the prosecution.

7. After discussing the grounds taken by the appellant/accused, the



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Trial Court has come to a conclusion that the appellant/accused is guilty of the offence under Section 323, IPC Section 4 TNWH Act r/w Section 3(1)(r), 3(1)(s) and 3(2)(Va) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) and imposed a sentence of one year rigorous imprisonment under Section 323 IPC and a fine of Rs.1000/- with default sentence of 3 months simple imprisonment; under Section 3(2)(Va) of SC/ST (POA) Amendment Act, one year rigorous imprisonment and fine of Rs.1000/- with default sentence of 3 months simple imprisonment under Section 3(1)(r) of SC/ST (POA) Amendment Act, one year rigorous imprisonment and a fine of Rs.1000/- with default sentence of 3 months simple imprisonment under Section 3(1)(S) of SC/ST (POA) Amendment Act and one year rigorous imprisonment and in fine of Rs.10,000/- with default sentence of 3 months simple imprisonment under Section 4 of TNWH Act and directed the sentences to run concurrently. Aggrieved over the said judgment, the present Appeal has been preferred.

8. The learned counsel appearing for the appellant has contended that no explanation has been offered by the prosecution for the delay in



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lodging the FIR; that none of the ingredients of Section 3(1)(r) or 3(1)(s) of the SC & ST Prevention of Atrocities Amendment Act, has been attracted, as the scene of occurrence was not at all a public place and the incident as narrated by the witnesses does not attract the offence under SC & ST Act. Further the learned counsel for the appellant submitted that the PWs 3 to 7 are relatives of PWs.1 & 2 and they are interested witnesses and non examination of independent witness has affected the case of the prosecution. The medical evidence i.e., evidence of PW-11 is to the effect that the injury could have been caused by falling and hence, the prosecution case is a fabricated one and not sustainable. It is also contended that it is an admitted case that the appellant/accused called PW-1 on 17.05.2018, to receive the money and the jewels and taking into account of a small quarrel between PW-1 and the appellant/accused, the PW-1 has lodged the complaint to harass the appellant/accused. The recovery of MO-1 has to be doubted in view of the fact that mahazaar witnesses have turned hostile and therefore, the learned counsel submitted that the judgment of conviction and sentenced passed by the Court below is liable to be set aside.



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9. Per contra, the learned Government Advocate Criminal side would submit in this case that PW-1 & PW-2 are the victims and both are also injured witnesses and PW-3 to PW-7 are also the co-workers. They have corroborated the evidence of PW-1 & PW-2 and further the Doctor/PW-11, who made the entry in the AR has stated that at the time of admitting in the hospital, they have stated that the assault was made by one known person with wooden log and had issued Ex.P.7 & Ex.P.8, wound certificate and AR entry of the PW-1 & PW-2, which would clearly show that a known person assaulted the victim and the injury sustained are simple in nature that PW-2, had no external injury and PW-1 sustained external injuries and therefore, the evidence of PW-1 & PW-2 and the evidence of Doctor/PW-11, would clearly show that due to the attack made by the appellant with the weapon, the victim sustained injury and therefore, the prosecution has proved its case beyond reasonable doubt and the Trial Court has rightly appreciated the evidence and imposed the sentence and conviction and there is no merit in the appeal and the same is liable to be dismissed.



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10. Heard the learned counsel appearing for the parties and perused the materials placed on record.

11. A careful perusal of the evidence that the PW-1/defacto complainant, who has stated that he got Rs.20000/- from the appellant for working in the brick kiln belonging to the appellant and the said amount obtained was an advance for which they have to work daily. They have to manufacture 10000 brick, for which their salary was a sum of Rs.5000/-, but the appellant deducted Rs.4000/- from the advance amount and every week they were paid only Rs.1000/-. Subsequently the appellant gave Rs.80,000/- to the defacto complainant and asked to bring persons for 4 pairs of brick cuttings. As per the promise made , the defacto complainant also brought the relatives /family members to work in the brick kiln. At one point of time, there was a loss in the brick business. The appellant borrowed some money from the defacto complainant and also jewels were given by the defacto complainant to the appellant, for which the appellant asked to come and collect the same,



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but however, at the time, the appellant scolded the defacto complainant with filthy language and also humiliated by attiring the caste name and when the defacto complainant questioned, he was beaten by the appellant with wooden log, due to which he sustained injury and similarly when PW-2/wife of PW-1 also questioned the same, the appellant scolded her with filthy language and also attiring caste name beat and insulted her. Thereafter they informed to their association, 'Irular Sangam', since the defacto complainant belonged to the Irular community, which falls under the members of the ST community. Thereafter they went to the hospital and on the next day, they preferred the complaint. Out of 14 witnesses, the defacto complainant was examined as PW-1, who has clearly narrated the incident and also the fact that the appellant humiliated by attiring caste name in the public place and assaulted with wooden log and caused injury. PW-2, wife of PW-1 also corroborated the evidence of PW-1. Both were admitted in the hospital, which is proved by Accident Register/Ex.P.6 & Ex.P.7, which shows that they were admitted in the hospital on the next day i.e., on 20.05.2018 at 3.30 pm and the occurrence had taken place on 19.05.2018 at about 17.30 hours. Though



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the defacto complainant had given the complaint on 21.05.2018 and the case was registered only on 23.05.2018 at about 19.30 hours. Thereafter police officials conducted the investigation.

12. Though the learned counsel appearing for the appellant stated that there was a delay in filing the complaint and registering the case, a perusal of the evidence of PWs-1 & 2, shows that soon after the occurrence they went to the association of their community and thereafter, only they were admitted in the hospital and gave the complaint immediately, thereafter just because the Police has not stated as to why they have not registered the case immediately would not affect the case of the prosecution and moreover in a case of this nature, where the defacto complainant is a Schedule Tribe community and also they have worked in the brick kiln for their survival, this Court is of the view that the Trial Court has rightly observed that in Vilupuram area, there are so many brick kiln in which brick kiln, most of the Irular community people worked in the brick kiln and they are working in the nature of bonded or contract labourers and they were illiterate and if an dispute arose, they



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used to first go to association of their community, which was an usual practice in that area. More over the Police officials were also reluctant to register the case immediately, and only after thorough scrutiny the police had registered the case and started investigation and therefore, delay is investigation or registering the case may not be a ground to disprove or disbelieve the evidence of the prosecution case.

13. Further, the AR/Ex.P.6 & Ex.P.7, clearly show that before the Doctor, the victim had stated that the alleged assault was made by a known person with wooden log on 19.05.2018 at about 5.30 pm near the Ayyanar Temple and opposite to school and it is evident that known person assaulted them with wooden log. Ex.P.7 clearly shows that there was an abrasion over the forearm and contusion in the arm clavicle to the PW-1/defacto complainant and therefore, from the evidence of PW-1, and Ex.P.7, wound certificates, the evidence of Doctor and PW-11 show that a known person caused the injury on PW-1, who is the defacto complainant. PW-2, wife of PW-1, accompanied with PW-1 and sustained injury and got admitted in the hospital, which is evident from



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Ex.P-6/AR entry. Furthermore, the evidence of the PW-2 corroborated the evidence of PW-1 that the appellant attacked them and also scolded with filthy language and attiring caste name and humiliated them in the public.

14. Admittedly, place of occurrence was said to have situated at Ayyanar temple, which is an open space, and easily accessible by the public and the appellant knows that the PW-1 & PW-2 belonged to Irular community (ST community) and the appellant is a non member of the schedule Tribe and Ex.P.8, community certificate of the appellant, which shows that he belonged to the Vanniyar community, and hence, a non-member of Schedule Tribe community and the Exs.P-14, 15 & 16, show that the victims belongs to the Irrular community and hence the members of the Schedule Tribe community, Therefore, from the evidence of PW-12 and the community certificate clearly shows that the appellant is a non-member of the Schedule Tribe community and he belonged to the Vanniyar community and the victims are the members of the Schedule Tribe members. The evidence of PW-1, clearly shows that the appellant



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humiliated them and PW-3 to PW-7 co-workers have corroborated the same. In this regard, though the learned counsel appearing for the appellant stated that PW-1 only made an arrangement of manpower and also based on his request, the witness PW-3 to 7 came and supported the case of the prosecution and corroborated the evidence of PWs 1 & 2, before the Doctor/PW-11 who treated the victims, the PW-1 & PW-2, stated about the injury caused by the appellant which is also evident from AR entry/Exs.P.6 & 7 coupled with the evidence of PWs clearly show that the injuries are simple in nature, but the injury was caused by the appellant on them.

15. As regards the delay in filing the FIR is concerned, the prosecution has explained the reason for the delay through the evidence, they filed the case and admitted in the hospital and a known person had assaulted them and therefore, under the circumstances delay in registering the case and sending the complaint cannot be a sole ground, to discard or disbelieve the case, unless there is a specific embellishment or deliberation. As far as this case is concerned, the delay in registering



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the FIR does not affect the case, since the evidence of the victims, eye witnesses and the medical evidences are corroborative in nature, pointing out the guilt of the accused. Further, it is stated by the learned counsel for the appellant that the place of occurrence is in the brick kiln, which is a private place, but the rough sketch would clearly show that occurrence place is nearby Ayyanar Temple, which is in the public view. Furthermore, the learned counsel appearing for the appellant stated that the mahazar witnesses have turned hostile and hence recovery of the wooden log has to be disbelieved. This contention has also to be rejected for the reason that the prosecution has established its case beyond reasonable doubt, as the evidence of the victim was corroborated by the evidence of PWs- 3 to 7 and medical evidence and there is no merit in this appeal and the same is liable to be dismissed.

16. In view of the discussions made above, the judgment of conviction and sentence passed by the Trial Court is confirmed. Hence, the trial Court is directed to take appropriate steps to secure the appellant to undergo his remaining period of sentence. The appellant is entitled to



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avail set off under Section 428 of Cr.P.C for the period of custody already undergone by him during investigation, enquiry and trial.

17. In the result, the Criminal Appeal is dismissed. Consequently connected Miscellaneous Petition is closed.

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Index :Yes/No

Internet:Yes/No

To

learned Sessions Judge, Special Court for Exclusive Trial of cases registered under the SC & ST Act, Villupuram



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P.VELMURUGAN, J

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**Order in
Criminal Appeal No.302 of 2020 &
Crl.M.P.No.4710 of 2020**

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