



Crl.A.Nos.398, 421 and 519 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.01.2023

PRONOUNCED ON : 10.02.2023

CORAM:

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

Crl.A.Nos.398, 421 and 519 of 2020

1. Pradap
2. Prasanna ...Appellants in Crl.A.No.398/20

1. Balu (Boopalan)
2. Mathi (Mathiyazhagan)
3. Dineshkumar (Dinesh)
4. Gowtham ...Appellants in Crl.A.No.421/20

Surya ...Appellant in Crl.A.No.519/20

Vs.

1. State represented by
The Deputy Superintendent of Police,
Namakkal Sub Division, Namakkal District.
(Cr.No.72 of 2019)

2. John PandianRespondents in Crl.A.Nos.398 & 421/2020

(R2 impleaded in Crl.A.No.398/2020 by order of this Court dated 08.10.2020 and impleaded in Crl.A.No.421/20 by order dated 28.10.2020)



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State represented by
The Deputy Superintendent of Police,
Namakkal Sub Division,
Namakkal District.

...Respondent in Crl.A.No.519/20

Prayer in all the Appeals: These Criminal Appeals are filed under Section 374(2) of Cr.P.C. 1973 to set aside the judgment of conviction passed against the appellants in S.C.No.23 of 2019 dated 09.09.2020 by the learned Sessions Judge, Special Court for SC & ST (PoA) Act Cases, Namakkal.

For Appellants : Mr.M.Jaikumar and Mr.V.Perarasu, Legal
Aid Counsel in Crl.A.No.398/2020

Mr.C.D.Johnson and Mr.V.Perarasu, Legal
Aid Counsel in Crl.A.No.421/2020

Mr.V.Perarasu, Legal
Aid Counsel in Crl.A.No.519/2020

For Respondents : Mr.R.Murthi,
Govt Advocate (Crl.Side) for R1 in all the
Appeals

: R2—No appearance in
Crl.A.Nos.398 & 421/2020



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JUDGMENT

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These criminal appeals have been filed to set aside the judgment of conviction passed against the appellants in S.C.No.23 of 2019 dated 09.09.2020 by the learned Sessions Judge, Special Court for SC & ST (PoA) Act Cases, Namakkal. Since all the criminal appeals are arising out of the same judgment of conviction as stated above, all the three criminal appeals are taken up together and disposed of by this common judgment.

2 The respondent police registered a case in Cr.No.72 of 2019 for the offence under Section 3(1)(r), 3(1)(s) and 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (herein after referred to as the “SC/SC Act”) against the first accused and for the offence under Sections 147, 148, 294(b), 323 and 324 of IPC r/w Section 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST Act against all the seven accused.

3 After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Court for SC/ST



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(PoA) Act Cases, Namakkal, which was taken on file in S.C.No.23 of 2019.

WEB COPY The learned Sessions Judge, after hearing both the accused and the prosecution and after perusing the records, since there is *prima facie* case, framed charges for the offence under Sections 147, 148, 323, 324 (2 counts) IPC r/w Section 3(2)(va) of SC/ST Act and Section 294(b) IPC r/w Section 3(1)(r), 3(1)(s) of SC/ST Act against A1 to A7 and subsequently during the course of trial, the charge has been altered according to which, A1 was charged for the offence under Sections 294(b) r/w Section 3(1)(r) of the SC/ST Act and Section 3(1)(s) of SC/ST Act and Sections 147, 148, 323 and 324 (2 counts) IPC r/w Section 3(2)(va) of SC/ST Act against A1 to A7.

4 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 11 were examined and Exs.P1 to 24 were marked besides five Material Objects were exhibited as M.Os.1 to 5. After completing prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses and put before the accused by questioning under Section 313 of Cr.P.C, they denied the same as false and pleaded not guilty. On the side of the defence, no one was examined and no document was marked.



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5 The learned Sessions Judge, after trial and hearing arguments advanced on either side, by judgment dated 09.09.2020, acquitted A1 for the offence under Section 294(b) IPC and Sections 3(1)(r) and 3(1)(s) of SC/ST Act and convicted all the seven accused and sentenced them to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.1,000/- each in default, to undergo simple imprisonment for a period of six months for the offence under Section 147 IPC r/w Section 3(2)(va) of SC/ST Act, to undergo rigorous imprisonment for a period of three years with fine of Rs.1000/- each, in default, to undergo simple imprisonment for a period of six months for the offence under Section 148 IPC r/w Section 3(2)(va) of SC/ST Act, to undergo rigorous imprisonment for a period of one year with fine of Rs.1000/- each, in default, to undergo simple imprisonment for a period of six months for the offence under Section 323 IPC r/w Section 3(2)(va) of SC/ST Act and to undergo rigorous imprisonment for a period of three years for each count with fine of Rs.1000/- each for each count, in default, to undergo simple imprisonment for a period of six months for the offence under Section 324 IPC r/w Section



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3(2)(va) of SC/ST Act. Aggrieved against the said judgment of conviction and sentence, the accused 4 to 5 have preferred the appeal in Crl.A.No.398 of 2020, accused 1, 3, 6 and 7 have preferred the appeal in Crl.A.No.421 of 2020 and the second accused has preferred the appeal in Crl.A.No.519 of 2020.

6 The learned counsel appearing for the respective appellants/accused would submit even as per the evidence of P.W.1 the injured witness, all the persons available at the time of alleged occurrence are only relative of P.W.1. The appellants were not aware of the family background of the injured witnesses P.Ws.1 & 2 and they were not aware of the fact that the injured witnesses belong to the scheduled caste community. Further more since there is no evidence to show that the appellants uttered the caste name of the injured witnesses with an intention to humiliate them in a public view, the trial Court has rightly come to the conclusion that the prosecution has not proved the charges under Sections 3(1)(r) and 3(1)(s) of SC/ST Act and acquitted accordingly, but unfortunately based on the very same materials has recorded conviction for the offence under Section 3(2)(va) of SC/ST Act, which is against the law.



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6.1 Further the Doctor P.W.7, who treated the injured witnesses has deposed that P.W.1 and P.W.2 the injured witnesses, soon after the occurrence, at the time of admission in the Hospital have stated that they were attacked by 30 known persons, but FIR came to be registered only against these appellants i.e. 7 persons, for which there is no explanation offered by the prosecution.

6.2 The learned counsel would further submit that the alleged occurrence is said to have taken place on 29.04.2019 at about 4.30 p.m., whereas the injured witnesses admitted in the Hospital only at 9.00 p.m., which also create doubt regarding the injuries said to have sustained by P.Ws.1 & 2. P.W.1 injured witness had left the Hospital without informing anyone and hence wound certificate also could not be given, which shows that he has not sustained any injury and the occurrence has not taken place as projected by the prosecution. The injuries sustained by P.W.2 also only simple in nature and hence the same would not attract the offence under Section 324 IPC.



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6.3 There are contradictions in the evidence of the prosecution witnesses regarding time of admission of the injured witnesses in the Hospital. Prosecution has miserably failed to examine any independent witnesses to prove the charges, when it was specifically alleged that the appellants assaulted the injured witnesses with deadly weapon and insulted them by uttering their caste name in the public view. The trial Court failed to consider these aspects and erroneously convicted the appellants, which warrants interference of this Court.

7 The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that the appellants are non member of the Scheduled Caste community and P.Ws.1 and 2 belong to Scheduled Caste community. On 29.04.2019 in the evening hours, when P.Ws.1 & 2 after having tiffin, returning their home, the appellants/A1 to A7 assembled unlawfully and when P.W.1 enquired, A1 scolded them in a filthy language by degrading their caste name and also attacked them with wooden log, in



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which, P.Ws.1 and 2 sustained injuries. The victims have clearly spoken about the occurrence and also the assault made by the accused. P.W.7, the Doctor, one who admitted the injured witnesses in the Hospital, even though has not issued wound certificate, has clearly spoken about the injuries sustained by P.Ws.1 and P.W.2. The certificate issued by the Tahsildar i.e. Exs.P5 and P6 clearly shows that P.Ws.1 and 2 belong to the Scheduled Caste community and Exs.P9 to 15 clearly shows that the appellants are non member of Scheduled Caste community.

8 From the evidence of P.Ws.1 to 3 and 7 and the documents marked on behalf of the prosecution, prosecution has proved its case beyond reasonable doubt. The learned trial Judge has rightly appreciated the evidence produced by the prosecution and convicted the appellants and imposed sentence, which does not call for any interference.

9 Heard the respective counsel for the appellants and the learned Government Advocate (Crl.Side) appearing for first respondent and perused the materials available on record.



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10 It is the case of the prosecution that on 29.04.2019 at about 5.30 p.m. while the injured witnesses P.Ws.1 and 2 who belong to Scheduled Caste community, after having tiffin, returning to their home, in Alangatham road junction to Bodinaickanpatty near library under the tamarind tree the appellants/A1 to A7 assembled unlawfully with wooden log and when P.W.1 questioned the same, A1 got angry and scolded in filthy language and humiliated P.W.1 by uttering his caste name and assaulted P.W.1 and P.W.2 with wooden log. Hence the complaint.

11 In order to prove the charges framed against the appellants, prosecution examined 11 witnesses, out of which P.Ws.1 and 2 are the injured witnesses and they have categorically stated about the incident.

12 The main contention raised by the the learned counsel for the appellants is that since prosecution has not proved that the appellant scolded the injured witnesses in filthy language and humiliated them by uttering their caste name, the trial Court acquitted the appellants for the offence



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under Sections 3(1)(r) and 3(1)(s) of the SC/ST Act, but based on the very same materials convicted the appellants for the other charges. To attract the offence under Section 3(1)(r) and 3(1)(s), prosecution should prove that the accused with an intention to insult the member of Scheduled Caste or Scheduled Tribe community humiliated them by caste name within public view, but in this case prosecution has not proved that the appellants humiliated the injured witnesses by caste name in public view and prosecution has not examined any independent witness to prove the charges. Therefore the trial Court acquitted the appellant for the above said charges, whereas from the evidence of the injured witnesses it is proved that the appellants assaulted the injured witnesses. Further from the evidence of P.W.7 the Doctor, who admitted the injured witnesses had clearly spoken about the injuries sustained by P.Ws.1 and 2 at the time of admission in the Hospital.

13 Even though, it is contended by the learned counsel for the appellants that P.W.1 left the Hospital on his own accord without informing anyone and there is no wound certificate issued to him, but the fact remains that in Ex.P7 AR copy of P.W.1 it is clearly mentioned about the injuries



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sustained by P.W1 at the time of admission. Hence from the evidence of the Doctor P.W.7 and AR copies of P.Ws.1 and 2 i.e. Exs.P7 and P8, prosecution has proved that P.Ws.1 and 2 sustained injuries, which are simple in nature. P.Ws.1 and 2 have also clearly stated that they were assaulted by the appellants.

14 Further it is contended by the learned counsel that P.Ws.1 and 2 at the time of admission in the Hospital before the Doctor has stated that 30 known persons attacked, but FIR came to be registered only against the appellants. A careful reading of the complaint and also the evidence of P.Ws.1 and 2 clearly shows that nowhere it is stated that 30 persons attacked and only they have mentioned the names of the accused, but before the Doctor only it is mentioned that 30 known persons attacked and hence it may not be a ground to suspect the FIR.

15 Trial Court has convicted the appellants for the offence under Sections 147, 148, 323 and 324 IPC r/w Section 3(2)(va) of the SC/ST Act. This Court, being an appellate Court, which is a final Court of fact finding, while re-appreciating the entire evidence and from the evidence of P.Ws.1, 2,



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6 to 8 and Exs.P5 to P15, finds that P.Ws.1 and 2 belong to Scheduled Caste community and the appellants are non member of the Scheduled Caste Community. Further since P.W.1 left the Hospital during treatment without informing anyone, P.W.7 could not give her final opinion and issue wound certificate, but however, she has noted the injuries sustained by P.Ws.1 and 2 at the time of admission, which are simple in nature. But there is no wound certificate to prove the injuries sustained by P.W.1 and since the injuries were also simple in nature this Court finds that no offence is made out under Section 324 (2 counts) IPC. As far as the other charges are concerned, conjoint reading of evidence of P.Ws.1, 2, 6,7 and 8 and Ex.P5 to P15, this Court finds that the appellants committed offence as concluded by the trial Court and the trial Court has rightly appreciated the evidence on record and convicted the appellants. This Court does not find any reason to interfere with the judgment of conviction dated 09.09.2020, since it is well founded and reasoned. So far as the charge under Section 324 (2 counts) is concerned this Court is inclined to set aside the conviction since this Court finds that prosecution has not proved the same.

16 The other contradictions pointed out by the learned counsel



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appearing for the appellants are not material contradictions and the same would not affect the case of the prosecution. Further it is settled proposition of law that mere defect in investigation, may not be a sole ground to disbelieve the case of the prosecution.

17 In the result these appeals are partly allowed by setting aside the conviction and sentence recorded against all the accused for the offence under Section 324 (2 counts) IPC alone and confirming the judgment of the trial Court with regard to other offences. Trial Court is directed to secure the appellants/accused to undergo remaining period of imprisonment, if any. The learned Legal Aid Counsel, who appeared for the appellants in all the cases is entitled to remuneration as per rules.

10.02.2023

Index : Yes/No
Speaking Order/Non Speaking

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To

1. The Sessions Judge,
Special Court for SC & ST (PoA) Act Cases,
Namakkal.
2. The Deputy Superintendent of Police,
Namakkal Sub Division, Namakkal District.
3. The Public Prosecutor, High Court of Madras.



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P.VELMURUGAN, J.,

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Pre-Delivery Judgment
in
Crl.A.Nos.398, 421 and 519 of 2020

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