



CRL A No.514 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	08.02.2023
Pronounced on	:	01.03.2023

Coram:

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

Criminal Appeal No.514 of 2020

Vinayagamoorthis

... Appellant

Vs.

1. The State represented by its
Inspector of Police
Thiyagadurgam Police Station
Villupuram District
Crime No.100 of 2018

2. Vijay

(R2 impleaded as per order in Crl.M.P.No.6161 of 2020
in Crl.A.No.27807 of 2020 dated 09.10.2020)

... Respondents

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence against the appellant in Special Case No.76 of 2018 passed by the learned Special Judge, Special Court for SC/ST Act Cases, Villupuram dated 08.09.2020 and allow this appeal.

For Appellant : Mr.S.Saravanakumar
For Respondents : Mr.S.Sugendran
Additional Public Prosecutor - R1
No Appearance - R2



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the conviction and sentence passed against the appellant in Special Case No.76 of 2018 by the learned Sessions Judge, Special Court for Exclusive trial of Cases registered under SC/ST (POA) Act Cases, Villupuram, dated 08.09.2020.

2. The respondent police registered the case in Crime No.100 of 2018 against the accused/appellant herein for the offences under Sections 294(b), 506(i) IPC and Sections 3(1)(r), 3(1)(s) of SC/ST (PoA) Amendment Act 2015 @ into Sections 294(b), 506(i), 355 IPC read with Sections 3(1)(r), 3(1)(s), 3(1)(za)(C), 3(2)(va) of SC/ST (PoA) Amendment Act 2015 and after investigation, laid charge sheet before the Sessions Judge, Special Court for Exclusive trial of Cases registered under SC/ST (POA) Act Cases, Villupuram, for the offences under Sections 294(b), 506(i), 355 IPC read with Sections 3(1)(r)(s), 3(1)(z)(a)(c), 3(2)(va) of SC/ST (PoA) Amendment Act, 2015. The learned Sessions Judge, taken the charge sheet on file in Special Case No.76 of 2018 and after completing the formalities, framed the charges



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for the offences under Sections 294(b), 355 IPC read with Sections 3(1)(r), 3(1)(s), 3(1)(za)(c), 3(2)(va) of SC/ST (PoA) Act.

3. After framing of charges and completing the formalities, in order to prove the case of the prosecution during trial before the trial Court, on the side of the prosecution totally 13 witnesses were examined as P.W.1 to P.W.13 and 7 documents were marked as Ex.P.1 to Ex.P.7 and no material object was exhibited.

4. After completing the examination of the prosecution witnesses, when incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence was produced.

5. On conclusion of trial after hearing the arguments advanced on either side, considering the material evidence, the trial Court found the guilt of the accused for the offences under Sections 3(1)(r) and 3(1)(s) of



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SC/ST (PoA) Amendment Act, 2015 and convicted and sentenced him to undergo 2 years rigorous imprisonment and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for a further period of 3 months for the offence under Section of 3(1)(r) of SC/ST (POA) Amendment Act, 2015; to undergo 2 years rigorous imprisonment and to pay fine of Rs.1,000/- in default, to undergo simple imprisonment for a further period of 3 months for the offence under Section 3(1)(s) of SC/ST (POA) Amendment Act, 2015. However, the accused was not found guilty for the offences under Sections 355 IPC and 3(2)(va), 3(2)(za)(c) of SC/ST (POA) Amendment Act, 2015 and thereby, he was acquitted from the said charges. Further, the trial Court has observed that since the accused was convicted for the offences under Sections 3(1)(r) and 3(1)(s) of (POA) Amendment Act, 2015, no separate sentence was ordered for the offence under Section 294(b) IPC and both the sentences were ordered to be run concurrently and the period of sentence which was already undergone by the accused, was ordered to be set off under Section 428 Cr.P.C.



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6. Aggrieved over the said Judgment of conviction and sentence, the accused has filed the present appeal before this Court. However, against the Judgment of acquittal of the accused for the above said charges, neither the State nor the victim has filed any appeal.

7. The specific case of the prosecution is that on 08.02.2018, in the Sivan Temple, near the market bund at Thiyagadurgam, there was a construction of compound wall was going on and the village important persons were discussing over there. At that time, there was an altercation between the appellant and one Venkatesan. On seeing the same, the deacto complainant interfered to pacify the them. Hence, the appellant got animosity against the deacto complainant. Thereafter, on 10.02.2018, Saturday at about 11.00 a.m., when the defacto complainant went to the Sivan temple to worship the God, the appellant stared at him and after worship of God, when the defacto complainant was coming from the temple, the appellant scolded the defeacto complainant with filthy language and by uttering his caste name stated that he should not come to temple since he belongs to scheduled caste community. Further, the appellant tried to beat the defacto complainant with Chappal and asked



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him to get away from that place. When the defacto complainant told him that he would inform the same to the police, the appellant told him to go wherever he wants and nothing can be done against him. Therefore, the defacto complainant preferred the complaint before the Thyagadurgam Police/respondent herein. Subsequently, the complaint was registered and after investigation, charge sheet was laid before the concerned Court. Hence the case.

8. The learned counsel for the appellant would submit that already the appellant had preferred a complaint against the defacto complainant and one Venkatesan for the incident took place on 08.02.2018 itself. The complaint was taken on file in C.S.R.No.89 of 2018 and in order to escape from that complaint, the defacto complainant filed a false complaint on 10.02.2018 and no such occurrence took place on 10.02.2018 as alleged by the prosecution. Further he would submit that even as per the allegations in the FIR, the alleged occurrence is said to have taken place on 10.02.2018 at about 11.00 a.m. but the FIR was registered belatedly on 13.02.2018 at about 15.15 hrs. and the said FIR was sent to the Court concern only on 28.02.2018 at 11.00 a.m. The



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unexplained delay in registering the FIR and sending the same to the Court are fatal to the case of the prosecution which clearly shows that after deliberation and embellishment, they purposefully filed the case and sent the FIR to the Court belatedly. Unfortunately, the trial Court failed to note the same. Therefore, the findings of the trial Court is perverse. Further he would submit that as per the evidence of P.W.10/Sub Inspector of Police, even on 10.02.2018 itself, the FIR was registered in Crime No.100 of 2018 for alleged offences under Sections 294(b), 506(i) IPC read with Section 3(1)(r) and 3(1)(s) of SC/ST (PoA) Amendment Act, 2015. But in contra, P.W.11/Inspector of Police has stated that when he was in duty on 13.02.2018, on the basis of CSR No.89 of 2018, he registered the FIR(Ex.P.4). Therefore, while considering the evidence of P.W.10 and P.W.11, the FIR which was marked as Ex.P.4 is a suspicious document and once the FIR is doubtful, the entire prosecution becomes doubtful. Further he would submit that the Village Administrative Officer who was examined as P.W.8 has stated that the accused was arrested by the Sub Inspector of Police and the confession statement was recorded. But as per the evidence of P.W.12/Deputy Superintendent of Police, he



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only arrested the accused in the presence of P.W.8 and one Thulasimani and recorded the confession. The material contradiction has very serious and creates very serious doubt on the prosecution. Further, initially the sanction for investigation was granted in favour of P.W.13 and subsequently, the Superintendent of Police had deputed P.W.12 as Investigating Officer by passing fresh order. But P.W.13 without any *locus standi*, conducted the investigation and filed the charge sheet. Hence the conviction and sentence passed by the trial Court are liable to be set aside. The trial Court has failed to appreciate the oral and documentary evidence and also the legal position and erroneously convicted the appellant which warrants interference.

9. The learned Additional Public Prosecutor appearing for the 1st respondent police would submit that on 08.02.2018, when a construction of compound wall was going on in the Sivan Temple situated at Thiyaadurgam Market bund, there was an altercation between the appellant and one Venkatesan during which, the appellant interfered to pacify them. Hence, the appellant got animosity with the defacto complainant. Thereafter, on 10.02.2018 (Saturday), when the defacto



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complainant was coming out from the Sivan Temple after worshipping the God, the appellant scolded him with filthy language and also uttered his caste name and humiliated him in the public view stating being a member of Schedule Caste community, he should not enter into the temple for worshipping God and the appellant also tried to beat him with Chappal. When the defacto complainant told him that he would inform to the police, the appellant asked him to go wherever he wants and nothing can be done against him. Therefore, the defacto complainant lodged a complaint before the respondent police on the same day. In order to substantiate the case of the prosecution, on the side of the prosecution, 13 witnesses were examined out of which, the defacto complainant was examined as P.W.1. P.W.2 to P.W.5 are the eyewitnesses to the occurrence and they have clearly stated that the appellant scolded the defacto complainant with filthy language by uttering his caste name and also tried to beat him with Chappal. The trial Court rightly appreciated the evidence of the prosecution witnesses and convicted the appellant. Therefore, there is no merit in the appeal and the same is liable to be dismissed.



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10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the 1st respondent/police and also perused the materials available on record.

11. The specific case of the prosecution is that the defacto complainant is a member of Scheduled Caste Community and the appellant is the non member of Scheduled Caste Community. Due to previous enmity, on 10.02.2018 (Saturday), when the defacto complainant was coming out from the Sivan Temple after worshipping the God, the appellant scolded him with filthy language and also uttered his caste name by stating that being a member of Schedule Caste community, he should not enter into the temple for worshipping God and the appellant also tried to beat him with Chappal. When the defacto complainant told him that he would inform to the police, the appellant asked him to go wherever he wants and nothing can be done against him. Hence, the case.

12. In order to substantiate the charges framed against the appellant, on the side of the prosecution, totally 13 witnesses were



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examined out of which, the defacto complainant who set the law into motion by lodging the complaint was examined as P.W.1.

13. P.W.1 in his evidence has clearly stated that prior to the occurrence i.e., on 08.02.2018, there was a construction of compound wall was going on in the Sivan Temple situated at Thiyyagadurgam Market bund and the village important persons were discussing over there. At that time, there was an altercation between the appellant and one Venkatesan. At that time, P.W.1 tried to pacify them. Hence, the appellant got animosity with P.W.1. Thereafter, on 10.02.2018, Saturday, when P.W.1 went to the Sivan Temple for worshipping God, the appellant starred at him. After worshipping the God, when P.W.1 was coming out from the temple, the appellant scolded P.W.1 with filthy language and also uttered his caste name and humiliated him in the public view by stating that being a member of Schedule Caste community, he should not enter into the temple for worshipping and also tried to beat him with Chappal. When the defacto complainant told him that he would inform to the police, the appellant asked him to go wherever he wants and nothing



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can be done against him. Therefore, he lodged a complaint on the same day.

14. P.W.2 to P.W.5 are the eyewitnesses to the occurrence and they have clearly stated that on 10.02.2018, the appellant scolded the defacto complainant with filthy language by uttering the caste name of the defacto complainant and humiliated him in the public view by stating that being a member of a Schedule Caste community, he should not come to the temple. Further, they have clearly stated that the appellant tried to beat the defacto complainant with his Chappal.

15. P.W.6 is the mahazar witness who has spoken about that the Investigating Officer came to the occurrence place and drawing the mahazar.

16. P.W.9 is the Special Tahsildhar who issued the community certificate/Ex.P.3 for the defacto complainant and the appellant which clearly shows that the defato complainant is a member of the Scheduled Caste Community and the appellant is a non member of Scheduled Caste community.



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17. Though the learned counsel for the appellant contended that the occurrence took place on 10.02.2018 but the FIR was registered belatedly on 13.02.2018 and that the FIR was sent to the Court concern only on 28.02.2018, the endorsement made in Ex.P.1/complaint clearly shows that the complaint was lodged on the date of occurrence itself i.e. on 10.02.2018 itself and the Sub Inspector of Police who received the complaint, has given CSR No.89 of 2018 on the same day itself and not on 13.02.2018 as stated by the learned counsel for the appellant. After preliminary enquiry, the FIR has been registered on 13.02.2018. Since the offence is under the SC/ST (PoA) Act, there are formalities to be followed and that the case has to be investigated by the police who is not less than the rank of Deputy Superintendent of Police. Mere delay in registering the FIR on the technical ground and delay in sending the FIR to the Court are not on the hands of the defacto complainant. It is all on the hands of the Investigating Officer. Therefore, mere defect on the part of the investigation, may not be a sole ground to disbelieve the case of the prosecution. Poor victim can only set the law into motion by lodging a complaint before the police and they should not be suffered by the



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to go wherever he wants and nothing can be done against him. This is the prevailing situation in our country. In most of the villages, the members of the Scheduled Caste community, are not able to go to temple for worshipping God or any other public places like water tank etc. to enjoy their rights like other humans. Even if one or other persons exercise their constitutional rights, the persons like the appellant deprive of their rights and taking advantage of their majority in the village, feels that they are upper-handed people and prevent the members of Scheduled Caste community from exercising their rights and in some cases, they even go to the extent of beating and humiliating the members of Scheduled Caste community in the public view. This case is one of the best example for the same.

19. In this case, from the evidence of the prosecution witnesses especially P.W.1 to P.W.6 and P.W.9 and also Ex.P.1 to Ex.P.3, this Court finds that the appellant has committed the charged offences. As stated above, mere defect in the investigation may not be a sole ground to prevent the administration of justice. The trial Court has rightly appreciated the oral and documentary evidence and convicted the



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appellant as stated above.

20. This Court, being an appellate Court as a final Court of fact finding, while re-appreciating the entire evidence, does not find any perversity in the appreciation of evidence by the trial Court. Therefore, there is no merit in the appeal and the appeal is liable to be dismissed.

21. Accordingly, this Criminal Appeal is dismissed. The respondent police is directed to secure the appellant to undergo the remaining period of sentence if any.

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Index:Yes/No



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To

1. The Sessions Judge, Special Court for Exclusive trial of Cases
registered under SC/ST (POA) Act Cases, Villupuram
2. Inspector of Police
Thiyagadurgam Police Station
Villupuram District
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.514 of 2020**

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