



WEB COPY



CrI.A.No.425 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.04.2023

Pronounced on : 19.04.2023

CORAM

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.425 of 2020

and

CrI.M.P.No.4937 of 2023

Jawahar

... Appellants/Accused

/versus/

1.State by
The Deputy Superintendent of Police,
Tiruchengode, Namakkal District,
Crime No.118/2019.

2.Veeramani

[R2. Is suo motu impleaded as per order
in CrI.A.No.425/2020 dated 28/10/2020]

... Respondent / Complainant

Prayer:- Criminal Appeal is filed under Section 14A (1) of the SC & ST (POA Act) r/w. 374(2) of Cr.P.C., praying to set aside the judgment dated 09.09.2020 made in Spl.S.C.No.12/2019 on the file of the learned Special Court for SC & ST (POA) Act Cases, Namakkal and allowing the Appeal throughout by acquitting the appellant.



Crl.A.No.425 of 2020

For Appellant : Mr.R.PRabakar
For R1 : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)
For R2 : Present

JUDGMENT

This Criminal Appeal is preferred by the accused against the judgment made in Spl.S.C.No.12/2019, on the file of the Special Court for SC & ST (Prevention of Atrocities Act), Namakkal.

2. The appellant was tried for the charges under Sections 341 of IPC r/w.3(2)(va) SC/ST (Prevention of Atrocities) Act, 2015, u/s.294(b), u/s.323 IPC r/w.3(2)(va) of SC/ST (Prevention of Atrocities) Act, u/s. 355 r/w.3(2)(va) of SC/ST (Prevention of Atrocities) Act and u/s. 506(i) r/w.3(2)(va) of SC/ST (Prevention of Atrocities) Act, u/s. 3(1)(S) and Section 3(1)(r) of SC/ST (POA) Act.

3. After considering the evidence let in by the prosecution through PW.1 to PW.13 and Ex.P1 to Ex.P9, the Trial Court acquitted the accused from charges



Crl.A.No.425 of 2020

under Section 3(1)(r) and 3(1)(s) of SC & ST (Prevention of Atrocities) Act and

Section 294 (b) IPC, 355 IPC r/w. 3(2)(va) of SC/ST (POA) Act and 506(i) r/w.

3(2)(va) of SC/ST (POA) Act. Held him guilty of charges under Section 323

I.P.C., r/w. 3 (2) (va) of SC/ST (POA) Act and 148 of I.P.C., and sentenced him

as below:

<i>Sl.No.</i>	<i>Offence convicted</i>	<i>Fine/punishment imposed</i>	<i>Default sentence</i>
1.	323 I.P.C., r/w. 3 (2) (va) of SC/ST (POA) Act	Sentenced to undergo 1 year R.I., and Fine of Rs.1,000/-	In default to undergo one month S.I
2.	148 of I.P.C.	Sentenced to undergo 1 month R.I., and Fine of Rs.500/-	In default to undergo one week S.I.

4. Aggrieved by the judgment of conviction and sentence, the accused has preferred this appeal.

5. The case of the prosecution before the Trial Court is that Veeramani (PW.1) is a resident of Arunthathiyar colony, Kallankattuvalasu(Post), Kumarapalayam Taluk. He is working as Fitter in a Spinning Mill situated at Mettukadai. On 22.02.2019 at about 1.30 p.m., when PW.1 was returning in his



CrI.A.No.425 of 2020

two wheeler to his working place after taking lunch, Jawahar, the accused, who is the resident of Vetavathi kadu, near Kooluvamoori, Vathiyar Kadu, Uppukulam, Kumarapalayam, wrongfully restrained and abused him using obscene words and caste name saying how dare he to ride vehicle before him then hit him on his head. When PW.1 questioned him, the accused kicked him on his chest and abdomen and told him that, if he travel again in this road, he will be finished. The occurrence was witnessed by one Sekar (PW.2) and Krishnamoorthy (PW.3). Thereafter, Mr.Subbu, the father of PW.1 was informed about the incident. He came to the spot and took PW.1 to the Kumarapalayam Government hospital for treatment. Tmt.Devi (PW.12), the Inspector of Police attached to Kumarapalayam Police station received information from the hospital and went to the hospital and at about 13.00 hours recorded the statement of the injured (PW.1). She (PW.12) registered First Information Report (Ex.P6) in Crime No.118/2019. Thereafter, she wrote a requisition letter to Superintendent of Police, Namakkal to appoint an Investigating Officer. Accordingly, Mr.Shanmugam, Deputy Superintendent of Police (PW.13), Tiruchengode was authorised to investigate the case. He took up the investigation as per the order of the Superintendent of Police, Namakkal and collected the evidence. He prepared the Observation Mahazar [Ex.P8] and Rough



CrI.A.No.425 of 2020

Sketch [Ex.P9]. After recording the statements of witnesses and collecting the caste certificate of the victim PW.1 and collecting wound certificate Ex.P5 issued by Dr.T.Mythili (PW.11), final report has been filed. The certificate shows that the victim belongs to Scheduled Caste which is protected under SC & ST (POA) Act and the accused belongs to non scheduled caste.

6. The learned counsel appearing for the accused submitted that the Trial Court miserably failed to appreciate the embellishment in the evidence of PW.1 and improbability of the presence of PW.2, PW3 and PW.6 at the place and time of occurrence. Further, the Trial Court failed to consider PW.2, PW.3 and PW.4 are interested witnesses and the only independent witness PW.6 had not deposed consistent to the case of the prosecution to inspire confidence.

7. Further, the learned counsel for the appellant submitted that PW.1 in the cross examination admits that for the past 10 years, he is using the said public road and he knows the accused for a long time, since his field is next to the land of the accused. To reach his field, he has to pass through the land of the accused. There was never any quarrel between them for all these years. Therefore, without



Crl.A.No.425 of 2020

any provocation, there can be no reason for the said incident alleged by PW.1. As far as PW.2 and PW.3 are concerned, their presence at the scene of occurrence is highly doubtful, because their residence is about 2 kms away from the scene of occurrence and they have not explained what for they were at the scene of occurrence on the particular day. In the cross examination of PW.1, it is admitted that PW.2 and PW.3 never used to accompany the victim (PW.1). Pointing that PW.2 and PW.3 belong to same community of PW.1 and being a interested witnesses, the Trial Court ought to have rejected their evidence as unreliable. Pointing out that Mohan Babu [PW.6] and Baskar [PW.7], whom according to PW.1, were present did not support the prosecution but turned hostile and Nalaboopathi [PW.8] a relative of PW.1 is only an hearsay witness, who admittedly came to the spot after hearing the news. The uncorroborated version of PW.1 ought to have been disbelieved. Subbu [PW.4] is the father of the PW.1 and Nalaboopathi [PW.8] brother in law of PW.1. Both are hearsay witnesses, who had gone to the scene of occurrence after hearing the alleged incident.

8. Referring the medical evidence as spoken by PW.11 Dr.Mythili, the learned counsel for the appellants submitted that there was no external injury



Crl.A.No.425 of 2020

found on the body of PW.1, the victim and as per wound certificate [Ex.P5], the injury is simple in nature. It is only the statement of the PW.1, who has reported that he suffers pain on his abdomen and head. Besides that, no other sign of injury was noticed by the doctor.

9. The learned counsel for the appellant further submitted that in the Accident Register [Ex.P5], there is a correction regarding number of person, who attacked PW.1. As per the Accident Register, PW.1 got himself admitted at Government hospital, Kumarapalayam on 22.02.2019 at 11.30 p.m..While the alleged incident had took place at 1.30 p.m., there is no explanation on the side of the prosecution as to why there is a delay of 10 hours to get admitted in the hospital. Further, pointing out the contradiction regarding the time of admission as spoken by PW.4. the father of PW.1 who had taken the injured to the hospital, the learned counsel submitted that to cover up the delay, PW.4 an interested witness has deposed in the cross examination that PW.1 was taken to the hospital at 3.30 p.m., which itself is contrary to the information recorded in the Accident Register [Ex.P5].



CrI.A.No.425 of 2020

10. Per contra, the learned Government Advocate (CrI.Side) for the State submitted that the incident was witnessed by PW.2 and PW.3 and PW.6. Though PW.6 turned hostile, the evidence of PW.2 and PW.3 had inspired the confidence of the Trial Court. Since their evidence is natural, their evidence cannot be discorded for the reason that they belong to the same community of PW.1 and they reside 2 kms away from the scene of occurrence. The testimony of PW.1 about the injury he sustained at the hands of the accused is corroborated by the testimony of PW.11, the Doctor, who treated the PW.1 and the wound certificate [Ex.P5] given by her. The prosecution has proved that the accused had wrongfully restrained the complainant and caused simple injury and also abused him by uttering words, thereby dishonouring a member of SC & ST community. Hence the conviction and sentence of the Trial Court to be confirmed.

11. Heard the learned counsel on both sides and records are perused.

12. From the chief and cross examination of PW.1 and the complaint given by him to the police marked as Ex.P1 indicates that PW.1 belongs to Arunthathiyar community, which is a caste enumerated in the Schedule. He is working in a Spinning Mill at Mettukadai. He used to go home to take his lunch



CrI.A.No.425 of 2020

and return for his work. For the past 10 years, he is using the public road passing through Kooluvamoori, Vathiyar Kadu, Uppukulam. In the cross examination, he admits that he knows the accused and he and the accused have their lands adjacent to each other. To reach his land, PW.1/victim has to pass through the accused land. Prior to this incident, there was no dispute or quarrel between them earlier. While so, when it is admitted that PW.1 used to take the said public road to travel between his residence and work place and he has been using the path way for nearly 10 years, all of a sudden why should the accused restrain him and abuse him for using the road and passing in a two wheeler in front of him is not satisfactorily explained. In a village where the complainant and the accused have the property adjacent to each other, and for the past 10 years there was no quarrel or dispute between them, why should the accused suddenly restrain him while passing through a public road and abuse and dishonour him in the name of his caste. This has to be explained by the prosecution, but strangely in this case, there is no explanation for the motive to attack and abuse PW.1.

13. According to the complaint as well as the testimony of PW.1, the accused was coming in a two wheeler driven by PW.6-Mohan Babu. The accused



Crl.A.No.425 of 2020

was on the pillion. On seeing PW.1, Mohan Babu stopped the two wheeler and the accused came to him and abused him using the caste name and attacked. The said Mohan Babu who was examined as PW.6 has turned hostile and not supported the case of prosecution. The other two eye witnesses PW.2-Sekar and PW.3-Krishnamoorthy have deposed that the accused was coming in the two wheeler driven by one Baskar and Mohan babu was coming in a separate two wheeler. The testimony of these two witnesses is contrary to the evidence of PW.1. The prosecution has examined both Mohan Babu as well as Baskar as PW.6 and PW.7. Both have turned hostile.

14. In the light of this fact, it is found that there is basic contradiction in the deposition made by PW.1, PW.2 and PW.3. How and why PW.2 and PW.3 were present at the spot not stated and that makes the case of the prosecution highly doubtful. Further, as pointed out by the learned counsel for the appellant, as per PW.1, PW.2 and PW.3, the incident occurred at 1.30 p.m., on 22.02.2019. PW.4 the father of the PW.1 had deposed that he admitted his son in the hospital at 3.30 p.m., whereas PW.11, the duty doctor had deposed that PW.4 with his son PW.1 came to the hospital only at 11.30 p.m that night. This is corroborated by the



Crl.A.No.425 of 2020

wound certificate [Ex.P5]. Therefore, even this fact has not been truly spoken by the witness of the prosecution. The glaring contradiction about the incident and the nature of injury and the time of admission in the hospital render the case of the prosecution doubtful.

15. The Trial Court miserably failed to appreciate the evidence properly, which are self contradictory and does not support the case of the prosecution. Hence the Criminal Appeal is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed. The conviction and sentence of the Trial Court is hereby set aside. The appellant is set at liberty. Fine amount, if any paid by the accused shall be refunded to him. Bail bond if any executed by the accused shall stand discharged.

19.04.2023

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



CrI.A.No.425 of 2020

To,

WEB COPY

1.The Special Court for SC & ST (POA) Act Cases, Namakkal.

2.The The Deputy Superintendent of Police,
Tiruchengode, Namakkal District.

3.The Public Prosecutor,
High Court of Madras,
Chennai.



WEB COPY



CrI.A.No.425 of 2020

Dr.G.JAYACHANDRAN.J.,

rpl

Pre-Delivery Judgment made in
Criminal Appeal No.425 of 2020

19.04.2023