



CRL A No.445 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	14.12.2022
Pronounced on	:	02.01.2023

Coram:

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

Criminal Appeal No.445 of 2020

1.Alexander

2.Rajendran

... Appellants

Vs.

1.The State represented by its
The Sub-Inspector of Police,
Ulundurpet Police Station,
Villupuram District.
Crime No.285 of 2019.

2.Arumugam

... 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 S.C.No.74 of 2019 passed by the learned Session Judge, Special Court for SC/ST Act Cases, Villupuram dated 09.10.2020 and allow this appeal.

For Appellants : Mr.S.Saravana Kumar

For R-1 : Mr.R.Murthi
Government Advocate

For R-2 : Notice Served
No appearance



CRL A No.445 of 2020

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J U D G M E N T

This Criminal Appeal has been filed to set aside the conviction and sentence against the appellant in Special S.C.No.74 of 2019 passed by the learned Session Judge, Special Court for SC/ST Act Cases, Villupuram dated 09.10.2020 and allow this appeal.

2. The respondent registered the case in Crime No.285 of 2019 for the offences under Sections 294(b), 323, 506(ii), 109 of IPC r/w 3(1)(r)(s), 3(2) (va) SC/ST Act (Prevention of Atrocities Amendment Act 2015). After completing the investigation, PW11 has filed the charge sheet against the accused for the above said offences before Special Court for SC & ST Act cases, Viluppuram, since the offences are against the member of Schedule Caste community. The learned Special Judge taken cognizance of the charge sheet on file in Spl.S.C.No.74 of 2019 and framed the charges against the 1st appellant herein for the offence under Section 323 of IPC and 2nd appellant for the offence under Section 506(ii) of IPC and 3(1)(r) of SC/ST (POA) Amendment Act, 2015 against all the accused.



CRL A No.445 of 2020

WEB COPY

3. After framing the charges, in order to substantiate the charges framed against the appellant during the trial, on the side of the prosecution as many as 11 witnesses were examined as PW 1 to PW 11 and 7 documents were marked as Ex. P1 to P7. No material object was exhibited.

4. After completing the examination of prosecution witnesses, when the incriminating circumstances culled out from the evidence of prosecution witnesses were put to the appellants by questioning under Section 313 of CrPc, wherein they denied the same as false and pleaded not guilty. On the side of the defense, one witness was examined as DW1 and 3 documents were marked as Ex. D1 to D3.

5. On completion of the trial, hearing the arguments advanced on either side and considering the materials, the trial court found not guilty of A3 and A4 from the above charged offences. However, the trial Court found guilt of the 1st accused/1st appellant for the offence under Sections 323 of IPC and 3(1)(r) and 3(1)(s), 3(2)(va) SC/ST (POA) Amendment



CRL A No.445 of 2020

WEB COPY

Act, 2015 and the 1st appellant was convicted for the offence punishable under Section 323 of IPC and sentence to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence, he was convicted and sentenced to pay fine of Rs.1000/- in default to undergo one month simple imprisonment for the offence under Section 3(2)(va) of SC/ST (POA) Amendment Act, 2015. Further, appellants 1 and 2 were found guilty of the offence under Section 3(1)(r) of SC/ST (POA) Amendment Act, 2015 and 3(1)(s) of SC/ST (POA) Amendment Act, 2015 and each of them were convicted and sentenced to undergo 1 year rigorous imprisonment and pay fine of Rs.1000/- in default to undergo one month simple imprisonment. Further, they were acquitted for the offence under Section 506(ii) of IPC.

6. Challenging the said judgment of conviction and sentence passed by the trial court, the accused have filed the present appeal.

7. The specific case of the prosecution is that the defacto complainant alleged to have borrowed a sum of Rs.50,000/- from 1st



CRL A No.445 of 2020

WEB COPY

appellant. Out of which, he repaid Rs.34,000/-. There was a due of balance amount and therefore, the 1st appellant filed a suit against the defacto complainant and the Court granted a decree in his favour. The 1st appellant, on the date of the occurrence, on 22.04.2019 at about 07.00 am along with the other appellants called the defacto complainant and asked to repay the balance amount. The defacto complainant made a request to grant some more time. The appellants said to have threatened the defacto complainant. Since the 1st appellant approached the Court, the defacto complainant stated that he will deposit the amount to the Court. The appellants got irritated and the 1st and 2nd appellants scolded the defacto complainant by uttering his caste name and humiliated him. The 1st appellant further punched the defacto complainant. PW2, the wife of the defacto complainant came to rescue him, however the appellants scolded her also. Later, he was taken to the hospital for treatment. Therefore, the defacto complainant lodged a complaint against all the accused and the respondent police registered the case. Since, the offence committed by the appellants are under SC/ST Act, PW11 investigated the matter and laid charge sheet. Therefore, the present case.



CRL A No.445 of 2020

WEB COPY

8. The learned counsel for the appellants would submit that as per the First Information Report, the alleged occurrence said to have taken place on 22.04.2019 at about 7.00 am. But, the FIR was registered belatedly on 10.05.2019 at about 12.00 pm. There is no plausible reason from the prosecution as to why such a delay occurred. Even the respondent police neglected to register the FIR against the appellants. However, due to the influence of the defacto complainant, the respondent police registered the present case. The delay in lodging the complaint is fatal to the case of the prosecution and it is only an after thought of the defacto complainant to lodge a case against the appellants. PW1/defacto complainant lodged the complaint before the respondent police mentioning the date of occurrence as 22.04.2019. However as per the evidence of PW10/Sub Inspector of Police, the complaint was received on 03.05.2019 in CSR.No.499 of 2019 and FIR was registered on 10.05.2019. PW1 and the prosecution totally suppressed the actual fact.

9. According to the defacto complainant/PW1, the occurrence said to have occurred on 22.04.2019 and immediately he was taken to hospital



CRL A No.445 of 2020

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for treatment. Per contra, PW8/Doctor made an entry in the accident register that the defacto complainant came to the hospital for treatment on 24.04.2019. The above said contradiction is a material contradiction which leads to serious doubt on the prosecution case. Further the place of occurrence is also disputed. As per the witnesses, the alleged occurrence said to have taken place near Dhandapandi Naatar's house. As per the evidence of PW3, the occurrence said to have taken place near by his house and as per the Accident Register/Ex.P4, the occurrence was said to have taken place nearby Mini Water Tank, which is far away from the Dhandapandi Naatar's house. Hence the prosecution has not proved where the occurrence had actually taken place.

10. He would submit that PW3 and the other alleged eye witnesses are close relatives of the PW1 and therefore, the eye witnesses are interested witnesses. Further, he would submit that, as per the evidence of PW10, the complaint was received by DW1, the Special Sub-Inspector of Police Gandhi and he conducted the preliminary enquiry. But the prosecution has suppressed the above said facts and even in the course of



CRL A No.445 of 2020

investigation, DW1 was not enquired by the Investigating Officer and DW1 was not cited either a witness in the charge sheet or in the trial Court, which also gives serious doubt on the genesis of the complaint. Further, he would submit that DW1, at the time of the preliminary enquiry, has acted in favour of the PW1 and insisted 2nd appellant to withdraw the execution proceedings on the basis of decree and Judgment in O.S.No.198 of 2017 dated 30.01.2019 against PW1. 2nd appellant had made a complaint to the Superintendent of Police and the same was marked as Ex.D3 and the case was instituted only to withdraw the execution proceedings filed by the 1st appellant against the defacto complainant.

11. Further, he would submit that from the very same oral and documentary evidence, the trial Court acquitted A3 and A4, on its finding that the prosecution has not proved its case and that trial Court erroneously convicted the appellants herein from the very same materials. Therefore, the Judgment of the trial Court is erroneous and liable to be set aside. He would submit that the defacto complainant in order to evade the payment to the 1st appellant and also in order to get



CRL A No.445 of 2020

over from the execution proceedings pending before the Civil Court, has foisted a false case against the appellants, as if the appellants scolded the defacto complainant and his wife, by uttering the name of their case and humiliated them. Therefore, the Judgment of the trial Court is liable to be set aside and this appeal has to be allowed and the appellants to be acquitted from the offence.

12. The learned Government Advocate (Criminal Side) appearing for the 1st respondent would submit that admittedly there was a money dispute between the defacto complainant and 1st appellant. The 1st appellant called PW3 and asked him to bring the defacto complainant to the occurrence place. When the PW3 took the defacto complainant to the said place, the appellants demanded him to pay the balance amount. Since a Civil dispute is pending between them, instead of working out his remedy in the manner known to law, the 1st appellant threatened and demanded money to the defacto complainant. When the defacto complainant said, he would pay the balance amount directly to the Court, the appellants got irritated. They scolded and humiliated the defacto complainant by uttering his caste name and even the 1st appellant



CRL A No.445 of 2020

punched him. Since none of the witnesses have stated that A3 and A4 also humiliated PW1 and PW2 by uttering their caste name and there is no specific overtact against A3 and A4, the trial Court acquitted them from the above said charges framed against them. However, PW1/ defacto complainant, PW2, the wife of the defacto complainant and PW5 the son of the defacto complainant and PW6 and PW9 have corroborated the evidence of PW1. PW3, who took the defacto complainant to the occurrence place also corroborated with the evidence of PW1. Therefore, the prosecution has proved its case beyond reasonable doubt that 1st appellant punched the defacto complainant and all the appellants humiliated him by uttering his caste name. Therefore, the trial Court even though acquitted A3 and A4, however rightly appreciated the oral and documentary evidence and convicted the appellants herein as stated above. There is no merits in this appeal and this appeal is liable to be dismissed.

13. Heard the learned counsel for both sides and perused the materials on record.



CRL A No.445 of 2020

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14. Admittedly, there was a money dispute between the 1st appellant and defacto complainant. 1st appellant filed a Civil suit against the defacto complainant in O.S.No.198 of 2017 and got a decree in his favour on 30.01.2019. Therefore, it is clear that there was a money dispute between 1st appellant and defacto complainant.

15. According to the prosecution, instead of proceeding with the execution proceedings, on 22.04.2019 at about 07.00 am, the 1st appellant along with other accused called PW3 and asked him to bring defacto complainant to the occurrence place which is situated near Dhadapandi Naatar's house. When the defacto complainant went there, the accused asked him to return the amount due to the 1st appellant. Though the defacto complainant humbly stated that he would pay the amount shortly, the appellants got irritated and scolded him. The 1st appellant punched the defacto complainant. When PW2 came for rescue, they humiliated her by uttering her caste name. Therefore, from the evidence of PW3 who was also at the occurrence place at the time of the occurrence, it is clear that the appellants called PW3 and asked him to take the defacto complainant to the occurrence place and the incident happened. He



CRL A No.445 of 2020

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further stated that the appellants scolded him by uttering his caste name and 1st appellant punched the defacto complainant.

16. Further, PW4 who is a Magazer witness stated that PW11 came to the occurrence place and enquired him. PW5 is none other than, the son of PW1 and PW2 also stated the above incident that PW3 took the defacto complainant to the occurrence place at the request made by the appellants. When defacto complainant reached there, the appellants humiliated him by uttering his caste name in the public view. The evidence of PW6 and PW9 also corroborated with the evidence of PW1 to PW3. The defacto complainant went to PW8/Doctor for treatment and the Doctor made a entry in the Accident Register/Ex.P4, which states that there is no external injury on the defacto complainant. PW8 also stated that the defacto complainant told him that a known person assaulted him with hands and due to the same he got simple injuries. Therefore, it is clear that 1st appellant punched the defacto complainant which corroborates with PW1 and PW2. Further, Tahsildar, who issued a Community certificate to the defacto complainant and the accused was examined as PW7 who has spoken about the community certificates



CRL A No.445 of 2020

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given to the defacto complainant and to all the accused. Therefore, from the evidence of PW7 and Ex.P3 series which is the community certificate, it is proved that the defacto complainant is a member of Schedule Caste community, whereas, the appellants are not members of Schedule Caste community. From the evidence of PW1, PW2, PW3, PW5, PW6 and PW9, it is clear that the appellants humiliated the defacto complainant and his wife by uttering their caste name. The evidence of PW2, PW5, PW6, PW8 and PW9, it is evident that 1st appellant punched the defacto complainant/PW1.

17. Though the learned counsel for the appellants vehemently contended that the date of the occurrence and the place of the occurrence are not proved and further, there was a enormous delay in filing the complaint, the delay in filing the complaint is not properly explained. There are possibilities of deliberations, in order to evade the repayment of the part of the loan amount borrowed from the 1st appellant. In this case, evidence of PW8/Doctor and PW1/defacto complainant clearly shows that on the date of the occurrence, defacto complainant sustained injuries. Later, he went to the hospital for treatment and the same was



CRL A No.445 of 2020

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entered in the Accident Register. Though DW1/Special Sub Inspector stated that the complaint was received later, but the defacto complainant stated that on the date of the occurrence, he was taken to the hospital for treatment and filed a complaint before the respondent police. Unfortunately, the defacto complainant is an uneducated and illiterate person, he may not know how to write a complaint. He informed the said incident to a third person and with the help of the third person a complaint was written and the same was given to the respondent police. However, the facts remains that the defacto complainant got humiliated by the appellants and the 1st appellant punched him and then he went to the PW8/Doctor for treatment and AR entry was made in that regard. Therefore, mere discrepancy in the date of the occurrence in the complaint is not fatal to the case of the prosecution. Further, from the evidence of PW3, he stated that appellants asked him to take the defacto complainant to the occurrence place and he did the same. Though one witness stated the occurrence place is near Dhandapandi Natar's house, whereas other witness stated that the incident happened near by his house and in the Accident Register it was stated as near water tank, does not



CRL A No.445 of 2020

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mean the evidence of PW1 can be discarded or disbelieve. All the landmarks stated by the witnesses are in the same village. One witness may name with one land mark and the other witness may point out the place with some other land mark, but it may not be a sole ground to discard the case of the prosecution. Though there is a delay in filing the complaint, the defacto complainant stated that he filed the complaint on the same day. For one or other reason, the respondent police has not registered the case on the same day. The respondent police might have thought that since the 1st appellant and defacto complainant are known persons, there is a possibility to settle the issue between them. However, the actual reason is not stated and FIR was registered belatedly. Since there was a delay in registering the FIR, the prosecution has proved that occurrence has taken place on the said date, due to that the defacto complainant got treatment in the hospital and he gave a complaint to the respondent police on the same day itself. Therefore, the evidence of PW1 corroborated with the evidence of PW8.

18. This Court finds that as an appellate Court as the final Court of fact finding, has re-appreciated the entire oral and documentary evidence



CRL A No.445 of 2020

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and found that the prosecution has proved its case beyond reasonable doubt. Therefore, there is no reason to interfere with the judgment of the trial Court. There may be some contradictions and discrepancies, but they are not material contradictions and they may not be a sole ground to disbelieve the evidence of PW1/defacto complainant. Therefore, this Court finds that the trial Court has rightly appreciated the entire evidence. Though it acquitted A3 and A4, they have rightly convicted A1 and A2 for the above said offences. There is no merit in the appeal and the same is liable to be dismissed. Accordingly, this Criminal Appeal case is dismissed.

02.01.2023

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Index:Yes/No

To

1. The Session Judge, Special Court for SC/ST Act Cases, Villupuram
2. The Sub-Inspector of Police,
Ulundurpet 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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CRL A No.445 of 2020

P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.445 of 2020**

02.01.2023