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Crl.A.No.487 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.487 of 2020

Mookuthi@Appusamy

... Appellant

Vs.

1. The Deputy Superintendent of Police,
Omalur Sub-Division,
(Tharamangalam Police Station),
Omalur Taluk, Salem District.

2. Sithan

[R2 suomotu impleaded as per
order in Crl.M.P.No.7658 of 2020
in Crl.A.No.487 of 2020 dated 04.12.2020]

... Respondents

Prayer:

Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentenced passed in S.C.No.273 of 2016 dated 29.10.2020 by the Principal Sessions Judge (Special Court of Scheduled and Scheduled Tribes Prevention of Atrocities), Act, 1989, Salem, Salem District.



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For Appellant : Mr.R.Muruga Bharathi

For R1 : Mr.R.Murthi
Government Advocate (Criminal Side)

* * * * *

JUDGEMENT

This Criminal Appeal has been filed against the order of conviction and sentenced dated 29.10.2020 passed in S.C.No.273 of 2016 on the file the Principal Sessions Judge, Special Court of Scheduled and Scheduled Tribes Prevention of Atrocities Act, 1989, Salem.

2. First respondent police registered the case against the appellant in Crime No.739 of 2015 for the offence under Sections 294(b), 323 and 506(i) IPC read with 3(1)(x) of SC/ST(POA) Act, 1989. After investigation, laid a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Omalur. The learned Magistrate has taken the charge sheet on file in P.R.C.No.2 of 2016 and after completing the formalities under Sections 207 and 209 Cr.P.C., committed the case to the Principal District and Sessions Court, Salem, designated court for SC/ST Act. The learned Sessions Judge has



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taken the case on file in S.C.No.273 of 2016 and framed the charges against the appellant for the offence under Sections 294(b), 323 and 506(i) IPC and 3(1)(x) of SC/ST(POA) Act, 1989.

3. In order to prove the case of the prosecution before the trial court, on the side of the prosecution, totally 17 witnesses were examined as P.W.1 to P.W.17 and ten documents were marked as Ex.P1 to Ex.P.10. No material object was exhibited. On the side of the defence, no oral and documentary evidence was produced.

4. On conclusion of trial and hearing the arguments advanced on either side, the trial court found the appellant guilty for the offence under Sections 294(b), 323 and 506(i) IPC and 3(1)(x) of SC/ST(POA) Act, 1989 and convicted and sentenced him to undergo three months imprisonment for the offence under Section 294(b) I.P.C. Further, the appellant was convicted and sentenced to undergo one year imprisonment and to pay fine of Rs.1,000/- in default to undergo three months imprisonment for the offence under Section 323 IPC. Further, he was convicted and sentenced to undergo three years



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imprisonment and to pay fine of Rs.1,000/-, in default to undergo nine months imprisonment for the offence under Section 3(1)(x) of SC/ST(POA) Act. He was convicted and sentenced to undergo one year imprisonment for the offence under Section 506(i) IPC. Aggrieved over the said judgment of conviction and sentence, the appellant/accused has filed the present Criminal Appeal before this Court.

5. Specific case of the prosecution is that P.W.1, who is the defacto-complainant borrowed sum of Rs.25,000/- from the accused/appellant herein. P.W.1 repaid sum of Rs.20,000/- on instalments and he has to pay the balance amount of Rs.5,000/- to the appellant. On 30.11.2015, when the defacto-complainant was standing along with P.W.4, P.W.5 and P.W.6, in front of Karukkalvadi Panchayat Office, the appellant came there and abused the complainant with filthy language and humiliated him by uttering his caste name and also assaulted him with hands. Thereafter, on the same day, when the defacto-complainant was at his house at about 2.00 pm, the accused came there and standing in front of the house, threatened him with dire consequences. Thereby, the accused had committed offences punishable under Sections 294(b), 323, 506(i) IPC read with 3(1)(x) of SC/ST(POA) Act.



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6. Learned counsel for the appellant would submit that there is a delay in lodging the complaint before the respondent police. The first occurrence said to have taken place on 30.11.2015 at about 10.00 am. But the complaint was lodged by way of statement before the respondent police on 01.12.2015 at about 18 hours is fatal to the case of the prosecution. Moreso, there is no valid reason for the delay in filing the complaint. The abovesaid delay has not been considered by the trial court and erroneously convicted the appellant. In this case, no eye witness has been examined by the prosecution. He would further submit that from the evidence of P.W.1, who is the defacto complainant, it is found that the occurrence said to have taken place on 30.11.2015 at about 10 am. The second occurrence said to have taken place at about 2.00 pm on the same day, in front of the defacto-complainant's house. The abovesaid two occurrences said to have taken place between four hours duration. During that time, the defacto-complainant did not give any complaint before the respondent police even soon after the second occurrence. He was admitted in hospital after four hours of the second occurrence. The statement was given after deliberation before the respondent police. Based on his statement, the respondent police registered the case. Therefore, genuineness of the complaint



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itself doubtful. Statement of P.W.1 that the accused attacked him at the time of first occurrence and after four hours of first occurrence, the appellant again in front of the house of the complainant, threatened him with dire consequences is highly unbelievable. If at all, during the first occurrence, the appellant attacked the defacto-complainant, he could have given the complaint before the respondent police or he could have gone to hospital to take treatment immediately. P.W.2 and P.W.3 are wife and son of P.W.1 respectively. P.W.1 to 3 are close relatives and they are interested witnesses. Since the first occurrence said to have taken place in front of Panchayth office, the prosecution has not examined any of the independent witnesses. Prosecution witnesses P.W.4, 5 and 6 were turned hostile. Hence, prosecution has not proved the occurrence by corroborative independent evidence. Evidence of P.Ws.1 to 3 are mutually contrary to each other. No independent witnesses have stated that the defacto complainant was humiliated by the appellant by using his caste name and threatened by the appellant with dire consequences. Therefore, conviction and sentence passed by the trial court is erroneous which warrants interference.



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7. Learned Government Advocate (Criminal Side) appearing for the respondent would submit that the prosecution has proved that the defacto complainant is the member of Scheduled Caste Community and the appellant is the non-member of the Scheduled Caste Community. From the evidence of prosecution witnesses, the prosecution has proved that the appellant humiliated the defacto-complainant in public view and also scolded him with filthy language and attacked him by hands and caused simple injuries on him and also he threatened the defacto-complainant with dire consequences. P.W.1 is the injured witness and the evidence of P.W.1 corroborated with the evidence of P.W.2. The doctor, one who has given treatment to the defacto-complainant has been examined as P.W.7. It is further submitted that all the evidences are cogent and reliable one. The injured witness P.W.1 corroborated the medical evidence/P.W.7 and the Accident Register-Ex.P2 and there is no delay in lodging the compliant. Further, the minor discrepancies and non-examination of available witnesses are not fatal to the case of the prosecution. Therefore, the above said all aspects are considered by the trial court and the trial court come to the conclusion that the appellant has committed offence and convicted the appellant. The prosecution has proved its case beyond reasonable doubt. The



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trial court also rightly appreciated the evidence and convicted the appellant as stated above. There is no merit in the appeal and the same is liable to be dismissed.

8. In order to substantiate the charges levelled against the accused, on the side of the prosecution, 17 witnesses were examined as P.Ws.1 to 17 and 10 documents have been marked as Ex.P1 to Ex.P10. On the side of the defence, no oral and documentary evidence has been produced. Out of 17 witnesses, the defacto-complainant, who is an injured witness was examined as P.W.1, has clearly deposed that on the date of occurrence ie., on 30.11.2015 at about 9.30 am, he was called by one Mrs.Vasanthi, President of Karukkalvadi Village Panchayath and she instructed him to spray bleaching powder in the water tank. At that time, the appellant came there and assaulted the defacto complainant. Further, the appellant uttered him with caste name. Husband of Panchayath President/P.W.4 and other witnesses P.Ws.5 and 6 were present at the place of occurrence at the time of occurrence. Again, at about 2.00 pm, the accused was standing in front of the defacto complainant's house, threatened him with dire consequences. P.Ws.2 and 3 are wife and son of P.W.1, who



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have corroborated the evidence of P.W.1. The prosecution proved the motive for the incident. From the evidence of P.W.8 and P.W.9 and Ex.P3 and Ex.P4, it is found that the defacto complainant belonged to the member of Scheduled Caste Community and the appellant belonged to non-member of Scheduled Caste Community. From the evidence of P.W.7-doctor and Ex.P2- A.R Copy, it is found that P.W.1 was admitted in the hospital and he has taken treatment from 30.11.2015 to 10.12.2015. The second occurrence was said to have taken place in front of the house of the complainant for which, P.Ws.2 and 3 who are wife and son of the defacto complainant respectively are the eye witnesses. Mere examination of the relative witness may not be the sole ground to disbelieve the case of the prosecution. If the eye witnesses are relative witnesses, and their evidences inspire the confidence of the Court, the Court can record conviction. This case is one of the best example for the same. This Court does not find any reason to disbelieve or discard the evidence of the relative/interested witnesses. Though P.Ws.4 to 6 were present at the time of first occurrence, during investigation, they have stated about the occurrence, subsequently, before the Court, they have not supported the case of the prosecution. P.W.16, who is the co-worker of the defacto complainant has



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clearly stated in her evidence that P.Ws.4 to 6 were present at the time of occurrence in the Panchayath Union office, where the occurrence took place and also she has clearly narrated the entire incident. P.W.16 is the independent witness who has also spoken about the occurrence and also the presence of P.Ws.4 to 6 at the place of occurrence at the time of occurrence. She has also deposed about the money transaction between the appellant and the defacto complainant. This Court finds that the evidence of P.W.1 is corroborated with the evidence of independent witness P.W.16. Therefore, from the evidence of P.Ws.1 to 3, P.W.16, P.W.7-doctor, Ex.P2-AR Copy, this Court finds that the appellant committed charged offences as stated above.

9. In view of the above, this Court do not find any perversity in the appreciation of the evidence and there is no merit in the appeal and the same is liable to be dismissed. However, considering the facts and circumstances of the case, sentence of imprisonment alone is hereby reduced from three years imprisonment to two years imprisonment for the offence under Section 3(1)(x) of SC/ST(POA) Act which would meet the ends of justice.



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10. Criminal Appeal is dismissed with the abovesaid modification.

Consequently, connected miscellaneous petition, if any, is closed. Since the appellant is on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.

04.01.2023

mfa

Index:yes/No

Internet:yes/No

To

1. The Principal Sessions Judge,
Special Court of Scheduled and Scheduled Tribes Prevention of
Atrocities Act, 1989,
Salem, Salem District.
3. The Deputy Superintendent of Police,
Omalur Sub-Division,
(Tharamangalam Police Station),
Omalur Taluk,
Salem District.
3. The Public Prosecutor,
High Court, Madras.

P.VELMURUGAN, J.

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