



Crl.A.No.102 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.102 of 2017

1.Kumar @ Senthil Kumar
2.Selvi
3.Velmurugan
4.Ravikumar Mandal
5.Saloon Mani @ Subramani ... Appellant/Accused 1 to 5

-Vs-

State represented by
Deputy Superintendent of Police,
South Police Station,
Erode Town Sub Division,
Erode District.
(Crime No.648 of 2015) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C, seeking to set aside the conviction and sentence imposed on the Appellants by judgment dated 30.01.2017 made in Spl.S.C.No.69 of 2016 on the file of the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

For Appellants : Mr.M.Vignesh
for M/s.C.S.Saravanan

For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor



JUDGMENT

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This Criminal Appeal is filed by the Accused 1 to 5, who had suffered conviction and sentence of imprisonment, challenging the judgment dated 30.01.2017 made in Spl.S.C.No.69 of 2016 on the file of the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

2.The Appellants are arrayed as A-1 to A5 in Spl.S.C.No.69 of 2016 on the file of the learned Principal Sessions Judge, Erode, which is the Special Court for Exclusive Trial of SC/ST (Prevention of Atrocities) Act, 1980. The learned Counsel for the Appellants invited the attention of this Court to the Charges framed by the trial Court. As per the charges, the first charge relates to the offence under Section 3(1)(r) and (s) of the SC/ST (PoA) Act, 1980 as amended as on 2014 against the Accused No.2. The second charge relates to the offence under Section 147 of IPC against the Accused Nos.1 to 5. The third charge relates to the offence under Section 274(b) of IPC against the Accused Nos.1 to 5. The fourth charge relates to the offence under Section 323 of IPC against the Accused 1, 3 to 5. The fifth charge relates to the offence under Section 324 of IPC against the second Accused alone. The six charge relates to the offence under Section



3(1)(r) and (s) of the SC/ST (PoA) Act, 1980 as amended as on 2014 against the Accused No.1. Since the Accused 1 to 5 denied the charges, the learned Principal Sessions Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode ordered trial. In the trial, the Prosecution had examined nine witness as P.W-1 to P.W-9 and marked sixteen exhibits as Ex.P-1 to Ex.P-16. The defence side two documents were marked as Ex.D-1 and Ex.D-2 and one material object as M.O-1.

3.The learned Counsel for the Appellants invited the attention of this Court to the deposition of P.W-1 to P.W-9 and Ex.P-1 complaint, Ex.P-2 copy of Accident Register of P.W-1 issued by Kovai Medical Centre, Erode, Ex.P-3 wound certificate of P.W-1 issued by Kovai Medical Centre, Erode. It is the submission of the learned Counsel for the Appellants that P.W-1 is the injured complainant. P.W-2 is the Doctor who treated him at Kovai Medical Centre at Erode and issued Ex.P-2 and P-3 to P.W-1. P.W-3 is the father of P.W-1. P.W-4 is the friend of P.W-1 and P.W-5 and P.W-6 are his relatives. P.W-7 also his friend. It is the submission of the learned Counsel for the Appellants that P.W-8 and P.W-9 are official witnesses viz., P.W-8-Sub Inspector of Police who registered the FIR under Ex.P-6 based on the complaint Ex.P-1 of P.W.1 and P.W-9 is the Deputy Superintendent of



Police who conducted the investigation and laid final report. Except P.W-8 and P.W-9, all other witnesses are interested witnesses related to P.W-1 and P.W-3. P.W-4, P.W-5 and P.W-7 turned hostile.

4.It is the submission of the learned Counsel for the Appellants that on perusal of the deposition of P.W-1 itself, one can find that P.W-1 had not deposed the truth before the Court. As per his evidence, he was attacked by A-1 and A-2 who runs Fast Food shop in the name of R.K.Fast Food. P.W-1 was employed in an iron scrap shop belongs to one Mathu. The Fast Food shop is adjacent to the iron scrap shop where P.W1 is working. It is his evidence that whenever he finds time he used to assist Accused 1 and 2 in their shop by cleaning the vessels. At that time, he refused to go over there fearing that his owner Mathu will terminate him from the services because the P.W-1 did not clean the vessels when required by the Accused 1 and 2. There was enmity against him. It is the submission of the learned Counsel for the Appellants that as per the Prosecution case that on 09.09.2015 by around 8 O' clock in the night a beggar came to R.K.Fast Food shop seeking food. At that time, the Accused No.2 is alleged to abused the beggar. On seeing this, P.W-1 who was waiting outside his owner's shop – Mathu scrap shop had advised Accused No.2 why she should abuse the beggar who is



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hungry and begging for food. For this, the Accused No.2 is alleged to have used abusive words including the caste name (சக்கிலிய தாயோலி) and scolded P.W-1. Also Accused No.2 had instigated Accused Nos.3 to 5 who are employed by Accused No.1 and 2 in their fast food shop to attack P.W-1. On the instigation of Accused No.2, P.W-1 was attacked by Accused Nos.3 to 5 who are employed in RK Fast Food Shop. Also Accused No.2 informed her husband-Accused No.1 that P.W-1 had assaulted her. For which Accused No.1 also abused P.W-1 with abusive words including caste name. At that time, Accused No.2 with ladle hit P.W-1 on various parts of the body and unable to bear the pain P.W-1 himself informed 108 Ambulance. Also P.W-3 father of P.W-1 came to the spot but was unable to intervene. He left to seek help from the neighbours to intervene. By the time, the Ambulance came and P.W-1 was taken to hospital.

5. It is the submission of the learned Counsel for the Appellants that in the vicinity of RK Fast Food shop there are so many hospitals but P.W-1 claimed that he was taken to Kovai Medical Centre at Erode in an Ambulance. Also, he would submit that P.W-1 in his deposition had stated that he fell unconscious but he himself had informed the 108 Ambulance on



his mobile. Further, the learned Counsel for the Appellants invited the attention of this Court to the deposition of P.W-3 the father of P.W-1 who claimed that his son was unconscious for three days. P.W-2 Doctor claims that P.W-1 was admitted in hospital but there was no visible injury. As per the evidence of P.W-2 Doctor P.W-1 informed that he was attacked by 10 persons in his place of work. Therefore, it is the submission of the learned Counsel for the Appellants that as per the information provided by P.W-1 to the treating Doctor that he was attacked in his place of work by 10 persons and not before RK Fast Food shop. Also, the learned Counsel for the Appellants invited the attention of this Court to the cross-examination of P.W-2 Doctor wherein he had admitted the suggestion of the defence that without any pain also one can claim that he is undergoing pain without any visible injury. On the pretext of suffering pain P.W-1 is alleged to have spent his time in Kovai Medical Centre at Erode for a week. Further, it is the submission of the learned Counsel for the Appellants that the version of the Prosecution Witnesses 1 to 3 mainly P.W-1 with his father is contradictory to each other. P.W-1 claimed that he regained consciousness in the hospital on the next day morning. P.W-3 stated that his son was unconscious for two days. Whereas the Doctor P.W-2 in his evidence under Exs.P-2 and P-3 clearly states that at the admission stage itself P.W-1



was conscious.

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6.It is the further submission of the learned Counsel for the Appellants that even though the alleged incident took place on 09.09.2015, information received by the Inspector of Police P.W-8 from the hospital only on 11.09.2015. The suggestion of the defence to P.W-1 the Complainant, P.W-3 father of the Complainant that three days the Police Team had gone to the complainant based on the intimation given by the Doctors at the hospital P.W-1 did not give complaint. It was belatedly given with an intention to foist false case against the Accused 1 to 5 after consulting with their friends and relatives. P.W-3 had stated in his cross-examination that he wanted to discuss before giving complaint. Therefore, it is the submission of the learned Counsel for the Appellants that Ex.P-1 complaint itself is after discussion with the friends and relatives to implead the Accused 1 to 5 to wreck vengeance on them. The learned Counsel for the Appellants further invited the attention of this Court to the portion of cross-examination of P.W-3 father of P.W-1 that two months prior to the very same FIR, his elder son had preferred similar complaint against the staff of Kalyan Jewellers at Erode under the same provisions of law. It is their method to foist cases and to get money either from the Government for



the offences committed against them under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or for extracting money from the Accused in the case. The learned Counsel for the Appellants also invited the attention of this Court to the name of an injured individual who is alleged to have been the leader of a party in the local area who used to help people like P.W-1 to foist cases against the individuals under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. When the defence had put a suggestion that the complaint was lodged after discussion with the local leader of a political outfit Neelamalai Muthuswamy, P.W-1 would admit in cross-examination that he is an acquaintance. Also P.W-1 in the cross-examination had admitted that the date of alleged occurrence had been interpolated in the complaint. Therefore, it is the submission of the learned Counsel for the Appellants that the charges framed by the trial Court was not proved beyond reasonable doubt before the trial Court through the witnesses P.W-1 to P.W-9. He had invited the attention of this Court to the cross-examination of the Inspector of Police who had registered the FIR under Ex.P-6 and the evidence of P.W-6 who happens to be a cousin of P.W-1 that immediately after the occurrence P.W-1 was taken to Government Hospital where the Doctors declined to admit him on the ground that there was no visible injury on the



body of P.W-1. Only then P.W-1 had gone to Kovai Medical Centre at Erode. The evidence of P.W-2 itself will be sufficient to acquit the Accused from the charges. In short, there is clear case of framing of the Accused by preferring a false complaint. The place of occurrence as stated by P.W-1 to the Doctors was the place of work where he is working in a scrap shop belonging to Mathu where the occurrence took place. As per the evidence it occurred before the RK Fast Food shop belonging to A-1 and A-2 where A-3 to A-5 are employees. As per the complaint and as per the earlier information provided by P.W-1 to the Doctor P.W-2, ten persons are alleged to have attacked P.W-1 whereas before the Court only five persons had been arrayed as Accused.

7.The learned Sessions Judge failed to appreciate the materials available in the cross-examination of each and every witnesses. P.W-4, 5 and 7 turned hostile. P.W-4 to P.W-7 are relatives and friends of P.W-1. The trial Court failed to take note of those facts and had on assumption and presumptions arrived at a conclusion that Accused Nos.1 to 5 had committed offence under Sections 147, 294(b) of I.P.C.; A-1, A-3 and A-5 had committed offence under Section 323 of IPC; Accused No.2 had committed offence under Section 324 IPC and had acquitted the Accused 1



and 2 from the charges under Section 3(1)(r) & (s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as amended in 2014. It is the submission of the learned Counsel for the Appellants that if the learned Judge had considered the entire materials he would have arrived at a conclusion that the entire charges had not been proved. Instead, he had convicted the Accused 1 to 5 for the offence under Sections 147, 294(b) and 323 and convicted the Accused 1 to 5 for offences under Section 324 of IPC, even though the Doctors had stated that there is no visible injury. Therefore, the same is to be set aside as perverse and all the Accused are to be acquitted from the charges.

8.It is his further submission that except A-1 to A-5 having been identified either by giving about their description in the complaint or giving their names, there was no identification parade conducted by the Prosecution. Therefore, the entire case of the Prosecution had to be considered as not proved. The learned trial Judge failed to consider those facts and therefore, the judgment of conviction and order of imprisonment are to be set aside as perverse.

9.The learned Additional Public Prosecutor appearing for the



Respondent/State vehemently objected to the submission of the learned Counsel for the Appellants stating that the learned Principal Sessions Judge, Erode on consideration of the entire materials and on proper appreciation of evidence had acquitted the Accused Nos.1 and 2 from the charges under Section 3(1)(r) and (s) of the SC/ST (PoA) Act, 1980 as amended as on 2014 and on the basis of the materials, had convicted the Accused 1 to 5 for the offences under Section 147 and 294(b) of IPC; Accused 1, 3 to 5 for offence under Section 323 of IPC and Accused 2 only under Section 324 of IPC. The learned Additional Public Prosecutor would submit that even though the witnesses 4, 5 and 7 turned hostile, their evidence cannot be rejected as they had supported the part of the Prosecution case as they have seen the occurrence. Also the learned Additional Public Prosecutor submitted that the submission of the learned Counsel for the Appellants that Mathu the owner of the old scrap shop where P.W-1 was employed was not at all examined as witness, cannot be accepted since there is evidence through P.W-1 that the said Mathu to help out Accused 1 and 2 from the case had approached P.W-1 by offering money to withdraw the complaint. Therefore, the submission of the learned Counsel for the Appellants that the said Mathu was not examined will not hold good and the same is to be rejected. When the evidence of P.W-1 is supported with the evidence of



P.W-2 Doctor, P.W-3 father of P.W-1, P.W-4 to P.W-7, even though the Prosecution had treated P.W-4, P.W-5 and P.W-7 had turned hostile. There are materials available to support the Prosecution case as the occurrence had taken place. Therefore, on proper appreciation of evidence, the learned Principal Sessions Judge had arrived at a conclusion that the charges against Accused 1 to Accused 5 under Sections 147 and 294(b) of IPC were proved and the charge against Accused 1, 3 to 5 under Section 323 of IPC has been proved and the charge against the Accused 2 alone for the offence under Section 324 of IPC was proved. Also the Learned Additional Public Prosecutor submitted that pain also attracts punishment. The same is undiscussed by the learned Principal Sessions Judge in the judgment and had rightly convicted the Accused. Further, the learned Additional Public Prosecutor would submit that the trial Judge had the chance of observing the demeanour of witness and Accused. Therefore, on the same set of facts even if the appellate Court arrives at a contrary conclusion, the findings of the appellate Court shall not be thrust upon the trial Court judge. Therefore, the appeal lacks merit and finding of the learned Principal Sessions Judge is to be confirmed and the appeal is to be dismissed.

Point for consideration:



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Whether the judgment of the learned Principal Sessions Judge, Erode in Spl.S.C.No.69 of 2016 dated 30.01.2017 is to be set aside as perverse?

10.Heard the learned Counsel for the Appellants, the learned Additional Public Prosecutor and perused the deposition of the witnesses P.W-1 to P.W-9, Ex.P-1 to Ex.P-16, Ex.D-1 and Ex.D-2 and also the judgment of the learned Principal Sessions Judge, Erode in Spl.S.C.No.69 of 2016, dated 30.01.2017.

11.On perusal of the judgment of the learned Principal Sessions Judge, Erode, as rightly pointed out by the learned Counsel for the Appellants, there are materials available in the cross-examination of the witnesses, particularly, P.W-1, P.W-2, P.W-3, P.W-6, P.W-8 and P.W-9.

12.As rightly pointed out by the learned Additional Public Prosecutor, the evidence of P.W-4, P.W-5 and P.W-7 cannot be ignored as hostile witnesses and cannot be rejected as they had supported the Prosecution case is found unbelievable. Considering the deposition of P.W-4, P.W-5 and P.W-7 regarding the occurrence as stated by P.W-1, they were treated as



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hostile and they had not deposed the entire evidence as stated by P.W-1 or P.W-3. At the same time, there is material available through P.W-6 that P.W-1 was not admitted in Government hospital, Erode since there was no visible injury on the body of P.W-1 and P.W-1 was conscious. This fact is supported with the evidence of P.W-3 who had claimed that P.W-1 was brought to Kovai Medical Centre at Erode after producing before the Government Hospital. P.W-2 Doctor had stated that he had served in Government Hospital for quite long years as a Doctor he would admit that even without pain and sufferings one can claim that he is undergoing pain. Further, as rightly pointed out by the learned Counsel for the Appellants Ex.P-1 Complaint, Ex.P-2 Accident Register of P.W-1 and Ex.P-3 Wound Certificate issued by Kovai Medical Centre, Erode clearly states that P.W-1 was conscious.

13. Even otherwise if the entire evidence of P.W-1 alone is analysed P.W-1 in the initial portion of his deposition claims that immediately after the attack by A-2, the wife of A-1 with a ladle, he fell unconscious which is found unbelievable that he became unconscious as he deposed as P.W-1 when he himself informed 108 Ambulance and 108 Ambulance came and picked him to hospital. Further, in his deposition, P.W-1 claims that he



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regained consciousness on the next day. Whereas P.W-3 father of P.W-1 claims that his son regained consciousness only after two days. To the suggestion of the defence that even after getting intimation from Kovai Medical Centre, Erode, the Investigation Officers or the Police Team had not visited the hospital thrice to record the statement. P.W-1 would state that when the Police Officers visited the hospital thrice to record his statement/complaint, he was unconscious. So they could not record his oral statement. He came to know about it later when he regained consciousness. Therefore, they left. It is found unacceptable in the light of Ex.P-2 and Ex.P-3. The suggestion of the defence that one Neelamalai Muthuswamy was behind the discussion and framing of the complaint, P.W-1 and P.W-3 denied the suggestion claiming that the said Neelamalai Muthuswamy is the acquaintance. Further, in the evidence of P.W-3 he says that when the Police came, he sought time stating that they wanted to discuss with the relatives before giving complaint. Therefore, there are materials available before the learned Sessions Judge that Ex-P-1 complaint is full of embellishment.

14.As rightly pointed out by the learned Counsel for the Appellants, at one stage when P.W-1 was brought to hospital he had reported to the Doctor



that he was attacked by 10 people at his workplace which is Mathu's shop dealing with scrap materials. Whereas in the complaint under Ex.P-1 he had stated that when he advised A-2 not to abuse a beggar, who is hungry and sought food, she had retaliated and abused him. Also A-2 had instigated her employees A-3 to A-5 to attack P.W-1. Also A-2 had informed her husband A-1 that P.W-1 had attacked her. Therefore, A-1 also joined them and abused and attacked which is found contradictory with what had been stated by P.W-1 to the Doctor at the stage of admission in hospital. The place of occurrence is also differs. The evidence of P.W-1 alone is found unbelievable when he claims that he was attacked with ladle he fell unconscious. If so, how he could have contacted 108 Ambulance. Also the evidence of Doctor that he was conscious on arrival and he was conscious when he was in treatment in the hospital for three or four days. Therefore, the Doctor admits in cross-examination that even one can claim he is undergoing pain even without pain. He had admitted that based on instructions of patient pain is recorded by Doctors. While so, the Police officials who visited after getting intimation was turned away by P.W-1 and P.W-3 on the pretext that they wanted to discuss with the relatives and friends. This was lost sight of by the learned Sessions Judge on assessment of evidence. If there is embellishment right at stage one of registering the



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case, then the Court has to approach the case of the Prosecution with caution. Here as per P.W-1 evidence the alleged occurrence took place on 09.09.2015 whereas the intimation received by the Police on 11.09.2015. When the Police came to Kovai Medical Centre at Erode to record the statement of the injured victim the Police Officials were sent back. Therefore, thrice they have visited the hospital as per the evidence of P.W-1 and his father P.W-3. Further, in the cross-examination P.W-1 admits that there are interpolations regarding the date of occurrence. The suggestion of involvement of one Neelamalai Muthuswamy who is a local leader in political outfit who used to assist in lodging of FIR. P.W-1 and P.W-3 even though denied the suggestion, they admitted that they have acquaintance with him. If the evidence of P.W-3 is analysed it is found that P.W-3 had sent away the Police Officials stating that they wanted to discuss with the relatives before registering FIR, which attracts the said defence of the Accused that Ex.P-6 is embellished after discussion. Therefore, the entire Prosecution case had to be rejected even though P.W-1 to P.W-6 had supported the Prosecution version. If the sentence in the complaint alone is accepted, deposition of P.W-1 to P.W-6 is to be treated as proved. The Prosecution proved its case without presumption and analysis. The case is different. Instead of taking the evidence of PW-1 to P.W-6 as cogent, the



Judge has to analyse the evidence available before the Court from the angle of the ordinary prudent man, that is, sifting the evidence. On analysing the evidence of P.W-1, the evidence of P.W-1 will not stand to judicial scrutiny. Instead, the learned Judge had convicted the Accused as though the charges had been proved. He having lost sight of the materials available particularly the evidence of P.W-2 Doctor under Ex.P-2 and Ex.P-3. In the light of those materials, the arguments of the learned Additional Public Prosecutor that the Appellate Court shall not disturb the findings of the trial judge if the trial judge on proper appreciation of evidence had convicted the Accused Nos.1 to 5 for the offence under Sections 147, 294(b) of I.P.C.; A-1, A-3 and A-5 for the offence under Section 323 of IPC; Accused No.2 for the offence under Section 324 IPC and had acquitted the Accused 1 and 2 from the charges under Section 3(1)(r) & (s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as amended in 2014, is found unacceptable as the learned Judge erred in sifting the evidence of P.W-1. If the evidence is sifted, it is found to be a glaring example of the embellished complaint. Therefore, the entire case has to be rejected.

15.In the light of the above discussion, the point for consideration is answered in favour of the Appellants and against the Respondent. The



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judgment of the learned Principal Sessions Judge, Erode in Spl.S.C.No.69 of 2016 dated 30.01.2017 is to be set aside.

In the result, this **Criminal Appeal is allowed**. The judgment of the learned Principal Sessions Judge, Erode in Spl.S.C.No.69 of 2016 dated 30.01.2017 is set aside and the Appellants are acquitted from all the charges. The bail bond executed by Appellants/Accused 1 to 5 is ordered to be cancelled. The fine amount paid, if any, by the Appellants/Accused-1 to 5 is to be refunded.

20.11.2023

srm
Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking order



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To

- 1.The Principal Sessions Judge,
Special Court for SC/ST (PoA) Act Cases,
Erode.
- 2.The Additional Public Prosecutor,
Madras High Court,
Chennai-600104.



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SATHI KUMAR SUKUMARA KURUP, J.,

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