



Crl. Appeal No. 252 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2023

Coram:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No. 252 of 2017

1.R.Elumalai
2.R.Kannan
3.K.Settu
4.S.Rani

.. Appellants

Vs

The State rep. by
The Deputy Superintendent of Police,
Thirukkivilur Sub Division,
Thirupalapandal Police Station,
Villupuram District.

.. Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C against the order of conviction and consequential sentences passed in a judgment dated 04.04.2017 made in Special S.C.No.5 of 2015 on the file of the learned Sessions Judge, Special Court for exclusive trial of cases registered under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram.

For Appellants .. Mr.C.Prabakaran

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



WEB COPY



Crl. Appeal No. 252 of 2017

JUDGMENT

The Criminal Appeal has been filed against the order of conviction and sentences passed in the judgment dated 04.04.2017 made in Special S.C.No.5 of 2015 on the file of the learned Sessions Judge, Special Court for exclusive trial of cases registered under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram.

2. The learned Counsel for the Appellants invited the attention of this Court that the F.I.R itself was lodged belatedly, which was registered after a delay of 22 days. Further, he submitted that he attacks the judgment on three grounds. The first ground is that there is delay in lodging the F.I.R. The second ground is genesis. The third ground is motive.

3. The learned Counsel for the Appellants invited the attention of this Court to the deposition of the witnesses P.W-1 to P.W-3. P.W-4 is the wife of P.W-3. P.W-5 is the person who was alleged to have mediated in the dispute between the



prosecution witnesses. P.W-6 had not supported the case of the prosecution and he had not identified the signature. P.W-7/The Deputy Tahsildar, had issued Caste certificate for the Accused. P.W-8 /Tahsildar had issued Caste Certificate for P.W-1. P.W-9 is the Investigation Officer in this case.

4. The learned Counsel for the Appellants invited the attention of this Court to the evidence of the main witnesses who were alleged to have been at the scene of occurrence. P.W-1 is the Complainant. P.W-2 was the person who had accompanied P.W-1 to the Police Station to lodge the complaint. P.W-1 in his evidence clearly stated that the Accused herein had not attacked, but only abused. Whereas P.W-3 claimed that the Accused had attacked.

5. It is the contention of the learned Counsel for the Appellants that there had been a civil dispute between the Accused and P.W-3. Only at the instance of P.W-3, this case had been registered based on the complaint of P.W-1 along with P.W-2 & P.W-3. Therefore, the charges framed by the learned Sessions Judge, Special Court for exclusive trial of cases under Scheduled Caste and Scheduled Tribes



(Prevention of Atrocities) Act, 1989 were not at all proved before the Court. The learned trial Judge had convicted the Accused ignoring the evidence available before the Court. Therefore, the judgment of the learned Sessions Judge, Special Court for exclusive trial of cases under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 recording the conviction against the Accused is perverse.

6. The learned Counsel for the Appellants invited the attention of this Court to the reported decision of the Hon'ble Supreme Court in the case of (i) ***Lakshmi Singh and others -vs- State of Bihar*** reported in ***(1976) 4 Supreme Court Cases 394*** and in the case of (ii) ***Apren Joseph Alias Current Kunjukunju and others -vs- The State of Kerala*** reported in ***(1973) (3) Supreme Court Cases 114*** regarding the delay in lodging the complaint and motive for the delay to implicate the Accused for a false case in Paragraph 37 of the judgment in ***(1973) (3) Supreme Court Cases 114***, which is held as follows:

"37. Even if it may be assumed that Pappu, Mathayi and Joseph PWs were afraid to go to the police station in the darkness of the night, there appears to be no justification cogent reason for their not



WEB COPY

reporting the matter to the police early on the following morning-. It is in evidence that on the following morning the about. According to Pappu (PW 1) he went to Puthupally in a bus on the following morning and passed through the spot where the dead body of Kunju was lying. The witness did not step down from the bus despite the fact that he saw the dead body lying there. Mathayi (PW 3) admits that he went on the following morning at 6 a.m. to Erumeli and returned from that place at 5.30 p.m. Joseph PW states that he went to Vakathanam Hospital by bus at 7.15 a.m. on the following morning. If the three eye witnesses could move about and go to different places on the following morning, there is no satisfactory explanation as to why they did not go to the police station and make a report about the occurrence if, in fact, Kunju deceased had been subjected to a murderous assault in their presence. The failure of Pappu, Mathayi and Joseph PWs to report the matter to the police creates considerable doubt about the veracity of the evidence of these witnesses that they had seen the accused causing injuries to the deceased. This Court in the case of Thulia Kali v. State of Tamil Nadu (Criminal Appeal No. 165 of 1971 decided on February 25, 1972) stressed the importance of making prompt report to the police regarding the commission of cognizable offence.

It was observed :

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating, the oral evidence adduced at the trial. The importance of 'the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene, of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of



Crl. Appeal No. 252 of 2017

spontaneity, danger creeps in of the introduction of coloured version exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in lodging of the first information report should be satisfactorily explained."

7. The learned Additional Public Prosecutor vehemently objected to the submissions of the learned Counsel for the Appellants. She submitted that the alleged occurrence took place in the year 2008, but the witnesses have been examined only in 2016. There was a delay of eight years in examining the witnesses. There may be minor contradictions that cannot be used against the prosecution. Further, the learned Additional Public Prosecutor invited the attention of this Court to the Judgement of the learned Sessions Judge, wherein the case of ***Lakshmi Singh and Others Vs State of Bihar*** reported in ***(1976) 4 Supreme Court Cases 394*** was cited. The learned Judge had pronounced a well reasoned judgment which cannot be interfered with by this Court. Accordingly, the learned Additional Public Prosecutor seeks to dismiss the appeal as having no merit.

Points for consideration:



Crl. Appeal No. 252 of 2017

Whether the judgment of conviction recorded by the learned Sessions Judge, Special Court for SC/ST in Special S.C.No.5 of 2015 by the judgment dated 04.04.2017 is to be set aside.

8. Heard the learned Counsel for the Appellant, Thiru.C.Prabhakaran and the learned Additional Public Prosecutor, Mrs, G.V.Kasthuri. Perused the evidence of P.W-1 to P.W-9, the exhibits marked as Ex.P-1 to Ex.P-10 and the judgment of the learned Sessions Judge, Special Court for exclusive trial of cases under SC/ST (Prevention of Atrocities) Act, Villupuram in Spl S.C.No.5 of 2015 dated 04.04.2017.

9. On consideration of the rival submissions and on perusal of the evidences of the main witnesses who were in the place of occurrence, namely, P.W-1 to P.W-3, it is found that there were contradictions. When P.W-1 was alleged to have stated that the Accused abused them in a filthy language and also using the name of the caste, in the cross examination he stated that the Accused did not know to which caste, the prosecution witnesses belong.



WEB COPY

10. It is true that the alleged occurrence took place in the year 2008, but the witnesses were examined eight years after the alleged occurrence. Still the witnesses have stated that the Accused do not know the caste of the witnesses. P.W-3 is the person, who had summoned P.W-1 and P.W-2 for digging the pit in the agricultural land. P.W-3 does not belong to the Scheduled Caste. P.W-1 is the member of the Scheduled Caste. P.W-3 admits in his cross examination that the Accused and P.W-3 had civil dispute pending before the Court. In the light of those materials, the judgment of conviction recorded by the learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram is found to be perverse and the same is set aside.

11. On perusal of the evidence of P.W-1, it is found that he had admitted that P.W-3 was not there in the place of occurrence. P.W-2 Kesavan was available along with P.W-1 for digging a trench in the land belonging to P.W-3. P.W-1 in his cross examination admitted that Ex.P-1 was written by a young man whose name



he does not knew, it was returned on 02.05.2008 by around 1 o'clock. P.W-1 also admitted in his cross examination that there was a civil dispute regarding properties between P.W-3 Govindan and father of Accused-1 and Accused-2, Ranganathan before the learned District Munsif Court. P.W-1 in his cross examination had admitted that except P.W-1 and P.W-4 others were not present in the scene of occurrence. The suggestion of the defence that only to help P.W-3, P.W-1 Govindaraj had given a false complaint against the Accused-1 to Accused-4. Since the Accused-1 and Accused- 2 had succeeded in the suit, the father of Accused-1 and Accused-2 had succeeded in the civil dispute before the trial Court by getting a decree in his favour against P.W-3 Govindan. P.W-3, Govindan had in his evidence in his cross examination admitted that the father of Accused-1 and Accused-2 Ranganathan had succeeded in the suit before the Civil Court and obtained a decree against P.W-3 Govindan. Only to wreck vengeance, P.W-3 Govindan had instigated P.W-1 to lodge a complaint under SC/ST (Prevention of Atrocities) Act against Accused-1 to Accused-4 and accordingly the name of P.W-1 was exploited by giving a complaint. The said suggestion was denied by P.W-1 Govindaraj in his cross examination and P.W-3 Govindan in his cross examination.



WEB COPY

12. The suggestion of the defence that trench was dug up on the pathway leading to the land of Accused-1 and Accused-2 and their father was admitted by P.W-2 Kesavan. The P.W-1 Govindaraj and P.W-2 Kesavan admitted that the lands in which they dug trench were not agricultural land. There was no crop standing at the time of alleged occurrence. P.W-3 Govindan denied the said such suggestion that P.W-3 had attempted to dig a trench on the pathway leading to the land of the father of the Accused-1 and Accused-2 Ranganathan in whose favour, the Civil Court granted a decree against P.W-3 Govindan for which Govindan had preferred this false complaint to wreck vengeance was denied by P.W-3. P.W-4 is Kasilamani who is the wife of P.W-3, she had denied the suggestion that her husband had given a false complaint exploiting the name of P.W-1 Govindaraj. P.W-5 Natarajan is the person who claims to have mediated between P.W-3 Govindan and the Accused family regarding land dispute and also he had stated that when the P.W-1 and P.W-2 went to the disputed property to dig trench, there was dispute between the family of the Accused and P.W-3. His attempt to mediate failed. Therefore he advised them to prefer Police complaint. To the pointed query, whether the alleged occurrence had taken place on which date, or in the complaint given to P.W-5 any



date was mentioned, time was mentioned or the place of the occurrence was mentioned, he claimed that those things were not mentioned. The suggestion that it was a false complaint and he is deposing false evidence was also denied by him. P.W-6 is the Mahazar witness regarding observation Mahazar and the rough sketch prepared by the Investigation Officer. P.W-7 is the Tahsildar who had issued Caste certificate regarding the caste of the Accused under Ex.P-3. P.W-8 is the Tahsildar who had issued Caste certificate to the P.W-1 Govindaraj under Ex.P-7. P.W-9 is the Investigation Officer. In the cross examination, P.W-9 had stated that there was no injury on the body on the Complainant P.W-1. Also as part of the investigation whether he had investigated regarding property dispute and the suit pending between the Accused and P.W-3 in O.S.NO.1098 of 2021, he stated that he had not collected those details. The pointed question whether alleged occurrence took place in the property for which the land records or revenue records were verified or collected, the investigation Officer had stated that he had not verified those details. He had admitted in his cross examination that he had not examined any witness from the place of occurrence. The land owners belonging to the adjacent properties were not examined as witnesses.



WEB COPY

13. On consideration of the entire materials through P.W-1 to P.W-5, who are the prosecution witnesses regarding occurrence it is found their evidence are vague and weak. They are weak they are unable to speak clearly the place of occurrence, time of occurrence and date of occurrence. Therefore in all probabilities the suggestion of the defence that the case was foisted by the P.W-3 who had lost the land civil dispute to the father of the Accused Ranganathan only to wreck vengeance, he had utilised the name of P.W-1 is found probable and reasonable.

14. If what had been stated by the P.W-1 in the complaint under Ex.P-1 had been proved, there should have been injuries on the body. P.W-9 Investigation Officer had clearly stated that there was injury on the body of the complainant. P.W-1 in his cross examination stated that he does not know the name of person who had written down Ex.P-1 complaint and it was a young man therefore the suggestion of the defence that the case was foisted utilising the name of P.W-1 is found probable. P.W-1 who claims to have been abused using caste name by Accused-1 to Accused-4 in his evidence had stated that he does not knew the



details of the civil dispute between the family of the Accused and the P.W-3 Govindan. But he was aware that there was civil dispute regarding the property. P.W-1 as well as P.W-2 belongs to the same community and caste. Except P.W-1 and P.W-2 there were no other persons admitted by P.W-1 and P.W-2 in their cross examination. The place where the alleged occurrence took place is not a public road. It was a place where there was no agricultural crops standing at the time of alleged occurrence. It is the defence of the Accused that P.W-3 attempted to dig a trench in the pathway leading to the land of the family of the Accused. Therefore he objected. Also there was a decree in favour of the family of the Accused. The father of the Accused, Ranganathan who had filed civil dispute against P.W-3 as Defendant was granted a decree from the Civil Court after full trial. The suit filed by the P.W-3 Govindan against the father of the Accused-1 and Accused-2 Ranganathan was also dismissed in the same judgment.

15. When P.W-1 Govindaraj was unable to state clearly who had written the complaint under Ex.P-1, then by all means it is at the instigation of P.W-3. The alleged occurrence took place on 11.04.2008 by around 11.00 a.m. As per the



Crl. Appeal No. 252 of 2017

evidence of P.W-1 and as per the complaint under Ex.P-1. F.I.R was registered on 02.05.2008 in Crime No.23 of 2008 for offences under 294(b), 506(ii) of I.P.C r/w. 3(1) (x) of the SC/ST (Prevention of the Atrocities) Act under Ex.P-8. The belated complaint preferred on 02.05.2008 is presumed that it was not a genuine and bonafide complaint. Except P.W-1 and P.W-2 who belongs to the same community, others were not present in the alleged place of occurrence is available through the evidence of P.W-1 and P.W-2 in their cross examination of P.W-4. The wife of P.W-3, she had denied the suggestion she was inside her house during the alleged occurrence. He was unable to give details of the occurrence. Therefore, it is felt that she is not an eye witness. P.W-5 is the person who claims to have mediated between the family of the Accused and family of the P.W-3 regarding property dispute he had not spelt out regarding words uttered by the Accused as complained by P.W-1. Therefore occurrence itself is found doubtful.

16. On assessment of the evidence, the learned Judge had convicted the Accused. On going through the judgment of the learned Sessions Judge, special Court for exclusive trial of cases under SC/ST (Prevention of Atrocities) Act,



Crl. Appeal No. 252 of 2017

Villupuram District, it is found that the learned Judge failed to consider the entire circumstances and materials through the cross examination of P.W-1 to P.W-9. Therefore the judgment of conviction recorded by the learned Sessions Judge, Special Court for exclusive trial of cases under SC/ST (Prevention of Atrocities) Act, Villupuram is found perverse. Therefore the same is set aside.

The **point for consideration is answered in favour of the Appellant/ Accused** and against the prosecution.

In the result, this **Criminal Appeal is allowed** and the Accused are acquitted.

19.07.2023

Internet : Yes/No
Index: Yes/No
Speaking Order: Yes/No
NCC : Yes / No
drl/shl



Crl. Appeal No. 252 of 2017

WEB COPY

To:

1. The Sessions Judge,
Special Court for exclusive trial of cases under
SC/ST (Prevention of Atrocities) Act, 1989,
Villupuram.
2. The State represented by
Deputy Superintendent of Police
Thirukovilur Sub Division
Thirupalapandal Police Station
Villupuram District.
3. The Section Officer, VR Records,
High Court, Chennai.



WEB COPY



Crl. Appeal No. 252 of 2017

SATHI KUMAR SUKUMARA KURUP,J.

drl/shl

Crl. A. No.252 of 2017

19.07.2023