



WEB COPY



.Crl.A.No.521 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 09.08.2023

Delivered On : 21.12.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.521 of 2017

K.Pazhani ... Appellant/Defacto Complainant

Vs.

1. P.Kaliyappan

2. M.Aarumuga Gounder

3. E.Jegadeesh

4. K.Vasanthamani @ Mariyammal ... Respondents 1 to 4/
Accused 1 to 4

5. The State Rep. By
The Deputy Superintendent of Police,
Pollachi Sub-Division,
Komangalam Police Station,
Coimbatore District.
(Crime No.120/2013) ... 5th Respondent/Complainant

PRAYER: Criminal Appeals filed under Section 372 of Cr.P.C., to set aside the Order of acquittal passed by the learned Principal District and Sessions Judge, Coimbatore in Spl.S.C.No.9/2014 dated 29.03.2016 and convict the Respondents/Accused 1 to 4 under Sections 294 (b) & 323 (against R1 to R4), 355 (Against R4), 3(1)(x) of SC/ST Act.



.Crl.A.No.521 of 2017.

WEB COPY

For Appellant : Mr.K.Thilageswaran

For Respondents : Mr.S.N.Arun Kumar
for Mr.M.N.Balakrishnan

ORDER

This Criminal Appeal has been filed to set aside the Order of acquittal passed by the learned Principal District and Sessions Judge, Coimbatore in Spl.S.C.No.9/2014 dated 29.03.2016.

2. The brief facts which are relevant for consideration as per the Prosecution are as follows:

On 16.06.2013, Aadhaar Card verification conducted by the Officials of the Revenue Department in the Nambiamathur Primary School. Senthil Mahesh and Ravikumar had asked Complainant/Palani/P.W-1 to assist them during the Aadhaar preparation by the Officials of the Revenue Department. He was assisting them in running errand. By around 17.00 hrs, he had brought tea for the officials, who were engaged in Aadhaar preparation work. At that time, he saw the Accused/Kaliappan, Senthil Mahesh, Ravikumar having wordy quarrel.



.Crl.A.No.521 of 2017.

WEB COPY

The Complainant/P.W-1 intervened and pacified both groups. At that time, the Accused are alleged to have abused him in filthy language including the caste name. A-1 also pushed him/P.W-1, lost his balance and fell down. At that time, A-2 and A-3 slapped on his face. A-4 is alleged to have slapped him with slipper and all the four raised objections stating that the persons belonging to Scheduled Caste have audacity to advise A-1 to A-4 belonging to higher caste. At that time, some members of the general public in the School pacified P.W-1 and brought him out of the School. He went home, he was unable to sleep because of the caste name used against him by the Accused 1 to 4. The next day, i.e., 17.06.2013 by around 22.30 hrs., he had approached the Sub Inspector of Police, Somangalam Police Station. P.W-6- the Sub Inspector of Police, Somangalam Police Station had registered a case in Cr.No.120/2013 for the offence under Sections 294 (b), 323, 355 of IPC and Section 3 (1) (x) of SC/ST (Prevention of Atrocities) Act, 1989. He had sent the original FIR under Ex.P-5 and original Complaint under Ex.P-1 to the Court of the learned Judicial Magistrate -II, Pollachi and the copies of the same sent to the higher Officials including Superintendent of Police. On receipt of FIR and Complaint, the



.Crl.A.No.521 of 2017.

WEB COPY

Superintendent of Police had issued proceedings to the Deputy Superintendent of Police/P.W-7. The Deputy Superintendent of Police had on receipt of the same had proceeded with the investigation. He had enquired the Complainant/P.W-1 and recorded his statement and he enquired the Doctor/P.W-4 in the Government Hospital, who had treated P.W-1 and issued Ex.P-3. He had enquired P.W-5-Tahsildar, who had issued Community Certificate to P.W-1. He prepared the rough sketch under Ex.P-6 and Observation Mahazar under Ex.P-2 in the presence of P.W-3. He had enquired other Witnesses and recorded their statements. After completion of the investigation, he laid the final report before the learned Judicial Magistrate - II, Pollachi. The learned Judicial Magistrate had taken cognizance of the offence and numbered it as PRC. The learned Judicial Magistrate-II, Pollachi had committed the case and bound over the case under Section 193 Cr.P.C., After hearing the argument of the Prosecution and the learned Counsel for the Accused, the learned Principal District and Sessions Judge, Coimbatore had framed charges against the Accused 1 to 4. The Accused denied the charges and claimed to be tried. Therefore, the learned Principal District and Sessions Judge had ordered trial. During trial, Prosecution had examined



.Crl.A.No.521 of 2017.

WEB COPY

Witnesses viz., P.W-1 to P.W-7 and marked documents under Ex.P-1 to Ex.P-7. After closing of Prosecution evidence, the incriminating evidence was pointed out to all the Accused 1 to 4. The Accused denied the incriminating evidence against them. After hearing the argument of the Prosecution and the learned Counsel for the Accused and on appreciation of evidence, the learned Principal District and Sessions Judge, Coimbatore had acquitted the Accused 1 to 4 from all the charges. Aggrieved by the same, the defacto Complainant had preferred this Appeal.

3. The learned Counsel for the Appellant submitted that the Appellant is the Defacto Complainant in this case. The learned Counsel for the Appellant invited the attention of this Court to the Complaint under Ex.P-1, to the deposition of P.W-1, to the evidence of the Doctor – P.W-4, to the discussion regarding the Complaint and the Investigation Officer's conduct in proceeding with the investigation. The learned Judge had stated that P.W-1 had fairly narrated the entire incident but the Investigation Officer failed to proceed with fair investigation. Therefore, taking advantage of the defective investigation, the learned Judge arrived



.Crl.A.No.521 of 2017.

WEB COPY

at a conclusion that the charges framed against the Accused had not been proved. Therefore, they were acquitted. Aggrieved by the same, the Appeal had been filed.

4. It is the contention of the learned Counsel for the Appellant that there are sufficient materials to prove the contents of the FIR. It is not the case of the number of witnesses, it is the quality of the witness. If he had stated the facts fairly and inspires the confidence of the Court, the defective investigation cannot be taken advantage in favour of the Accused. Here, the learned Judge had failed to do so. Therefore, he seeks to set aside the Judgment of the acquittal and to convict the Accused based on the evidence available before the trial Court.

5. The learned Additional Public Prosecutor appearing for the fifth Respondent/Complainant by way of reply submitted that except P.W-1, other witnesses turned hostile. P.W-5 is the Tahsildar. The Doctor was examined as P.W-4. Except the Doctor, the Tahsildar and the Investigation Officer, the independent witnesses cited by the prosecution turned hostile.



.Crl.A.No.521 of 2017.

WEB COPY

6. The learned Trial Judge, on appreciation of the evidence had acquitted A-1 to A-4, stating that there is no corroboration.

7. The learned Additional Public Prosecutor submitted that in cases of this nature, after the evidence of the victim inspires confidence, the learned trial Judge in his or her discretion can convict the Accused.

8. The learned Additional Public Prosecutor invited the attention of this Court to the reported ruling of the Hon'ble Supreme Court in the case of *Bhajan Singh alias Harbhajan Singh Vs. State of Haryana* reported in *(2011) 7 SCC 421* and submitted that the Judgment of the learned trial Judge is to be set aside.

9. The learned Counsel for the Respondents 1 to 4/A-1 to A-4 submitted that the alleged incident took place on 16.06.2013 at around 17.00 hrs. The Complaint was lodged on 17.06.2013 at 22.30 hrs. As per the accident register furnished by the Prosecution, the victim/P.W-1 had gone to the hospital. The Wound Certificate under Ex.P-3 states that a



.Crl.A.No.521 of 2017.

WEB COPY

male and female are alleged to have attacked the victim. In the Complaint, four persons were named. The alleged occurrence had taken place on 16.06.2013 at around 17.00 hrs in a School compound. As per the evidence of P.W-1-victim, he is alleged to have intervened when there was a fight between two individuals. The other persons with whom A-1 is alleged to have picked up a quarrel had not been cited as a witness. Further, there is a delay in lodging the complaint. After about 24 hrs, the alleged complaint had been registered. None of the independent witnesses available at that time in the School compound were examined as witnesses by the Prosecution.

10. Had the occurrence taken place within a School compound, where there might have been official witnesses, who are the School Staff and the School Teachers. They would have been cited as Witnesses by the Prosecution. Here, the offence under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has to be proved. There is a greater degree of proof necessary to convict A-1 to A-4. The charges are grave in nature. The Prosecution miserably failed in this case. Therefore, the learned trial Judge in Paragraph No.11 of the



.Crl.A.No.521 of 2017.

WEB COPY

Judgment had discussed the evidence. Therefore, on proper appreciation of evidence, the learned trial Judge had acquitted A-1 to A-4. If the learned trial Judge had on proper appreciation of evidence, arrived at a conclusion, the learned Appellate Judge shall not disturb the finding recorded by the learned trial Judge. Therefore, it is the submission of the learned Counsel for the Respondents 1 to 4/A-1 to A-4 that the Judgment of the learned trial Judge is based on proper appreciation of evidence shall not be disturbed. Therefore, he seeks to dismiss the Appeal and confirm the Judgment of the learned trial Judge.

11. Point for consideration:

Whether the Judgment of acquittal recorded by the learned Principal District and Sessions Judge, Coimbatore in Spl.S.C.No.9/2014 dated 29.03.2016 is to be set aside as perverse and the Judgment of acquittal is to be reversed?

12. Heard the learned Counsel for the Appellant/defacto Complainant and the learned Counsel for the Respondents 1 to 4/Accused 1 to 4 before the trial Court and the learned Additional Public Prosecutor for the fifth Respondent/State.



.Crl.A.No.521 of 2017.

WEB COPY

13. Perused the Charges framed by the learned trial Judge, the evidence of the Prosecution Witnesses viz., P.W-1 to P.W-7 and the Documents under Ex.P-1 to Ex.P-7.

14. P.W-1 is Palani, in his evidence, he had narrated the facts as in the Complaint under Ex.P-1, he had withstood cross-examination. Except his evidence, Official Witnesses viz., P.W-4 to P.W-7 are not Witnesses to the occurrence. This is a special enactment attracting grave punishment. Therefore, the Prosecution has greater duty/burden to prove the case. P.W-2 is a relative of P.W-1. He himself had not supported the version of P.W-1. Apart from that, the occurrence took place on 16.06.2013 by around 17.00 hrs. The Complaint was lodged on 17.06.2013 by around 22.30 hrs. Therefore, beyond 24 hours, the Complaint has been preferred. When there is that much delay, it creates suspicious circumstances.

15. The Wound Certificate under Ex.P-3 states that one male and one female Accused persons had attacked the Complainant/P.W-1/injured



.Crl.A.No.521 of 2017.

whereas in the Complaint under Ex.P-1, the names of four persons had been mentioned. As per the Complaint under Ex.P-1, the occurrence alleged to have been taken place when the Aadhaar Card verification conducted by the Officials in the Primary School. At that time, there were wordy quarrel between A-1 and another person/Senthil Mahesh, P.W-1 is alleged to have intervened and pacified them on which they are alleged to have abused in filthy language including caste name attracting Provisions of SC/ST (Prevention of Atrocities) Act. When there are officials inside the School with regard to Aadhaar verification any of those Staff members of the School could have been cited as Witness regarding the incident. The Investigation Officer had not cited any of those independent Witnesses available in the School to support the case of the Prosecution.

16. On perusal of the Judgment passed by the learned Principal District and Sessions Judge, Coimbatore, the learned Principal District and Sessions Judge had discussed the entire materials available before him and arrived at a conclusion. Therefore, in the light of the fact that the FIR was lodged belatedly, the Complaint also given belatedly. It



.Crl.A.No.521 of 2017.

WEB COPY

creates doubt in the mind of the Court, particularly, in the absence of independent Witnesses. Therefore, the learned Principal District and Sessions Judge, Coimbatore had on proper appreciation of evidence, acquitted the Accused. The Appellate Court had on appreciation of evidence will not disturb the findings arrived at by the learned trial Judge, if the learned trial Judge had on proper appreciation of evidence had arrived at a conclusion.

17. If the Appellate Court on the same set of evidence, arrives at a different conclusion, still the Judgment of acquittal recorded by the learned trial Judge will not be disturbed on the ground that the learned trial Judge had the advantage of observing demeanour of Witnesses which advantage is not available to the Appellate Court. Therefore, it is an accepted principle laid down by the Hon'ble Supreme Court, the Appellate Court shall not disturb the finding of the learned trial Judge, if it is a proper appreciation of evidence. Here, the submission of the learned Counsel for the Appellant/defacto Complainant is that eventhough there were sufficient materials available in the evidence of P.W-1, the learned Sessions Judge did not convict the Accused. As far as



.Crl.A.No.521 of 2017.

WEB COPY

evidence of the Doctors are concerned, it is only a simple injury and not a grievous injury. As regards pain, other than the patient's claim that he has suffered pain, there is no evidence and the patient's mere claim that he suffered pain without anything more can't be treated as evidence. The delay in filing Complaint by the victim/P.W-2 itself goes against him. He had lodged a Complaint under Ex.P-1, belatedly, after 24 hours of the alleged occurrence. The Investigation Officer had not examined any of the School functionaries in the School in which the occurrence is alleged to have taken place, either the Staff of the School or the Teachers of the School or the Officials connected with verification of Aadhaar Card which was conducted in the School on the alleged date. In the absence of those materials, it is not safe to rely on P.W-1 alone, to convict the Accused. Therefore, the learned Principal District and Sessions Judge had rightly concluded the case recording the judgment of acquittal. The submission of the learned Counsel for the Appellant/defacto Complainant is found unacceptable in the light of the settled principle of law regarding appreciation of evidence as laid down by the Hon'ble Supreme Court. The ruling of the Hon'ble Supreme Court relied by the learned Additional Public Prosecutor in the reported decision of ***Bhajansingh @***



.Crl.A.No.521 of 2017.

Harbhajan Singh and others Vs. State of Haryana reported in (2011) 7
WEB COPY

SCC 421 will not be helpful to the facts of this case. In the light of the reported ruling, when evidence of the injured witness is available before the trial Court, the trial Court had acquitted the Accused in this case. Therefore, the Hon'ble Supreme Court had held that the evidence of injured witness is very reliable and that itself will be sufficient to convict the Accused. Also, related witness can be relied upon. Here, P.W-2 himself is a relative of P.W-1 who had not supported the evidence of P.W-1. Doctors in this case have stated that P.W-1 mentioned about pain and there is no grievous injury. As per the charges framed in the Court, the Accused 1 to 4 are alleged to have abused in filthy language including calling him by caste name. Therefore, the charges were framed under the Provisions of SC/ST (Prevention of Atrocities) Act. On appreciation of evidence, the learned trial Judge had acquitted the Accused since the Prosecution failed to produce the evidence regarding charges beyond reasonable doubt. Except P.W-1 and Official Witnesses, there was no independent Witness, the Official Witness, P.W-5-Tahsildar can only state that P.W-1 belongs to Scheduled Caste that cannot



.Crl.A.No.521 of 2017.

corroborate the evidence of P.W-1. P.W-5 and P.W-6, they can only speak about P.W-1 before treated for pain and there was no visible injury.

Under those circumstances, the Judgment relied by the learned Additional Public Prosecutor will not be helpful to the facts of this case.

Hence, rejected.

18. The Point for consideration is answered in favour of the Respondents/Accused and against the Appellant/defacto Complainant.

In the result, this *Criminal Appeal is dismissed* as having no merits. The Order passed by the learned Principal District and Sessions Judge, Coimbatore in Spl.S.C.No.9/2014 dated 29.03.2016 is hereby confirmed.

21.12.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



WEB COPY



.Crl.A.No.521 of 2017.

SATHI KUMAR SUKUMARA KURUP, J.

dh

To

1. The Judicial Magistrate No.2,
Pollachi.
2. The Principal District and Sessions Judge,
Coimbatore.
3. The Deputy Superintendent of Police,
Pollachi Sub-Division,
Komangalam Police Station,
Coimbatore District.
4. The Public Prosecutor,
High Court, Madras.

Order made in
Crl.A.No.521 of 2017

21.12.2023