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Crl.A.No.69 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.A.No.69 of 2017

Jegan

... Appellant

VS.

The Deputy Superintendent of Police
Gingee Sub Division,
Gingee Police Station,
Gingee.

... Respondent

Prayer : Criminal Appeal filed under Sections 374 (2) of the Code of Criminal Procedure praying against the conviction and sentence in S.C.No.51 of 2016 dated 24.01.2017 on the file of the learned Sessions Judge, Special Court under the SC & ST (Prevention of Atrocities) Act, 1989, Villupuram.

For Appellant

: Mr.N.Suresh

For Respondent

: Mr.L.Baskaran

Government Advocate (Crl. Side)

ORDER

This Criminal Appeal has been filed against the judgment and order passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the SC/ST (Prevention of Atrocities) Act, 1989, Villupuram in



Spl.S.C.No.51 of 2016, dated 24.01.2017, convicting and sentencing the appellant in the following manner:

S.No	Conviction for offence under	Sentence/Punishment
1.	Section 3(1)(r) and Section 3(1)(s) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "The Act")	One year simple imprisonment and to pay a fine of Rs.3,000/- and in default, to undergo simple imprisonment for three months.
2.	Section 352 IPC	Three months simple imprisonment and to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for twenty one days.
3.	Section 354 IPC	One year simple imprisonment and to pay a fine of Rs.3,000/- and in default, to undergo simple imprisonment for three months.

The above sentences were directed to run concurrently and the period of custody already undergone by the appellant was directed to be set-off under Section 428 of Cr.P.C.

2.The case of the prosecution is that the victim lady PW1 belongs to the Scheduled Caste community. The appellant belongs to Hindu Vanniyar community. The appellant seems to have given a complaint against the husband of PW1 on the ground that he is selling illicit arrack and as a result of the same, the



husband of PW1 was arrested and remanded to judicial custody. On 10.01.2016, at about 7 a.m. when PW1 was in her shop, she questioned the appellant as to why he gave a false complaint against her husband and as a result, she is struggling to sustain her livelihood. On hearing the same, the appellant is said to have abused PW1 in a filthy language by using her caste name. Thereafter, the appellant is said to have attacked PW1 with his hands and pushed her down. PW1 gave a complaint (Ex.P1) before the Gingee Police Station on 10.01.2016 at about 20.00 hours. Based on this complaint, PW8, who was the Sub Inspector of Police, registered an FIR (Ex.P5) in Crime No.15 of 2016 for offence under Sections 294(b), 323 of IPC read with 3(1)(x) of the Act.

3.The investigation was taken up by the Deputy Superintendent of Police, Villupuram (PW9). He went to the scene of crime and prepared the Observation Mahazer marked as Ex.P7 and the Rough Sketch marked as Ex.P8 in the presence of witnesses PW5 and PW6. PW9 also arrested the appellant on 11.01.2016 at about 9.30 a.m. The appellant was produced before the learned Judicial Magistrate, Gingee and he was remanded to judicial custody.

4.PW9 thereafter recorded the statement of the witnesses under Section 161(3) of Cr.P.C. In the course of investigation, PW9 filed an Alteration Report



marked as Ex.P9 and the offence was altered to Sections 294(b) and 352 of IPC read with 3(1)(r) and Section 3(1)(s) of the Act. PW9 was transferred and hence, the investigation was taken up by PW10. He completed the investigation and filed the final report on 21.04.2016 before the Trial Court.

5.The Trial Court after furnishing the copies to the appellant under Section 207 of Cr.P.C., was convinced that a *prima facie* case has been made out and hence, framed charges against the appellant for offences under Section 3(1)(r) and Section 3(1)(s) of the Act and Section 352 and 354 of IPC. When these charges were put to the appellant, he denied the same and pleaded not guilty.

6.The prosecution examined PW1 to PW10 and marked Ex.P1 to Ex.P9. The incriminating evidence that was gathered during the course of trial was put to the appellant when he was questioned under Section 313 (1)(b) of Cr.P.C., he denied the same as false.

7.The Trial Court on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and accordingly, the appellant was convicted and sentenced in the manner stated *supra*. Aggrieved by the same, the present Criminal Appeal has been filed before this Court.



8.Heard Mr.N.Suresh, learned counsel appearing on behalf of the petitioner and Mr.L.Baskaran, learned Government Advocate (Criminal Side) appearing on behalf of the respondent.

9.This Court has carefully considered the submissions made on either side and also the materials available on record.

10.The facts of the case as projected in the final report based on which charges were framed against the appellant was that the husband of PW1 was running the tiffin corner at Modaiyur road and the appellant was also running a petty shop adjacent to the tiffin corner. It is further stated that the appellant was troubling the customers, who were coming to the tiffin corner and this was questioned by the husband of the PW1. In view of the same, there was a previous enmity between the parties. Pursuant to the same, the appellant is said to have abused PW1 in a filthy language by using her caste name.

11.The version that was given by PW1 in the evidence goes completely against the version that is found in the charges framed against the appellant. According to PW1, she questioned the appellant as to why he gave a false



complaint against the husband of PW1 and on being questioned, the appellant is said to have abused PW1 in a filthy language by using her caste name. It is therefore clear that there is a fundamental difference insofar as the cause of action for the appellant to have abused PW1 by using her caste name.

12.PW1, who is the victim in her evidence states that the appellant abused her by using the caste name on 10.01.2016 at about 7 a.m., when she was in her tiffin corner. PW1 does not state as to whether such an abuse was made in public view or whether there were any persons who were present at the time when the appellant is said to have abused PW1 by using caste name.

13.PW2 and PW3, who were examined by the prosecution as if they have witnessed the incident, did not support the case of the prosecution and hence, they were treated as hostile witnesses.

14.Only other witness whose evidence has been strongly relied upon by the prosecution was PW4. This witness states that he was going to his lands during the first month of 2016 at about 2 p.m. and at that time, he heard the appellant abusing PW1 in her caste name. This evidence of PW4 runs completely contrary to the evidence of PW1, since according to PW1, the incident had taken place on



10.01.2016 at about 7 a.m. and whereas, PW4 has stated that he was going through that place at about 2 p.m. Hence, PW4 could not have been present in the scene of crime. The fact that the incident had taken place on 10.01.2016 at about 7 a.m. is also evident from the complaint which was given by PW1 on 10.01.2016 at about 8 p.m.

15.The incident is said to have taken place on 10.01.2016 at about 7 a.m. and whereas, the complaint was given only at 8 p.m. and there is absolutely no explanation as to why there was such an enormous delay in lodging the complaint.

16.In terms of evidence, what is available before the Court is only the evidence of PW1. The evidence of PW4 runs contrary to the evidence of PW1 and therefore, the evidence of PW4 is also liable to be rejected by this Court, since PW4 could not have been present in the scene of crime on 10.01.2016 at 7 a.m.

17.On carefully going through the evidence on PW1, there is absolutely no indication that the appellant had abused PW1 within public view. PW1 also does not state in her evidence as to whether anyone else was present in the scene of occurrence when the appellant is said to have abused PW1. There is also no proof that the appellant had attacked PW1 with his hands and pushed her down.



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18.To sustain a charge under Section 352 of IPC, the ingredients of Section 350 or 351 of IPC must be proved. Section 350 of IPC talks about use of criminal force and Section 351 of IPC talks about commission of assault. The ingredients of both these sections have not been proved by the prosecution.

19.Insofar as the offence under Section 354 of IPC is concerned, there must be an assault or criminal force on woman with an intent to outrage her modesty. The ingredients of this offence has also not been proved by the prosecution.

20.The evidence of PW1 is not completely reliable, since she had an axe to grind against the appellant in view of the complaint given by the appellant against the husband of PW1 for selling illicit arrack. Wherever, the Court is not able to completely rely upon the evidence of a witness and the quality of evidence is neither wholly reliable nor wholly unreliable, the Court has to necessarily look for corroboration. Unfortunately in the present case, there is no corroboration for the evidence of PW1 and hence, the benefit of doubt has to be given to the appellant.

21.The Court below was unnecessarily swayed away by the usage of the caste name as stated in the complaint (Ex.P1) and in the evidence of PW1. The



Court below did not recognize the fact that such usage of caste name while abusing the victim must take place in public view which is the *sine qua non* to sustain a charge under Section 3(1)(r) and Section 3(1)(s) of the Act. As to what is a public view, the Hon'ble Apex Court in ***Hitest Verma vs. State of Uttarakhand & another*** reported in **2020 (3) MWN (Cr.) 381 (SC)** has held as follows:

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh & Ors. v. State through Standing Counsel & Ors.⁵ The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen 5 (2008) 8 SCC 435 by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view. The Court held as under:

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this



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was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

22. In the light of the above discussion, this Court has absolutely no hesitation to interfere with the judgment and order passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under the SC/ST (Prevention of Atrocities) Act, 1989, Villupuram in Spl.S.C.No.51 of 2016, dated 24.01.2017 and the same is hereby set aside. The appellant is acquitted from all



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charges. The bail bond executed by the appellant shall stand cancelled and fine amount paid, if any, shall be refunded to the appellant.

23.In the result, this Criminal Appeal stands allowed.

05.04.2023

Index : Yes
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes
ssr

To

- 1.The Sessions Judge,
Special Court under the SC & ST (Prevention of Atrocities) Act, 1989,
Villupuram.
- 2.The Deputy Superintendent of Police
Gingee Sub Division,
Gingee Police Station,
Gingee.



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N. ANAND VENKATESH, J.

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