



Crl.A.No.818 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date of Reserving Order 21.06.2023	Date of Pronouncing Order 28.06.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.818 of 2018

B.Parimala,
W/o.K.Boopalan,
Kottaian Mettu Street,
N.S.K.Nagar,
Kanjambadi 632 102.
Vellore, Vellore District.

... Appellant

Vs.

1.The Deputy Superintendent of Police,
Vellore Sub Division,
Vellore Taluk & District,
Cr.No.139/2014

2.Jayanthi,
W/o.Natarajan,
Bharathi Nagar,
Kaniyambadi 632 102,
Vellore Taluk & District.

... Respondents

Prayer: Appeal filed under Section 372 Criminal Procedure Code against the Judgment in Special Sessions Case No.1 of 2015, dated 02.07.2018 passed by the learned Principal Sessions Judge, Vellore, Vellore District for the offences under Section 451, 506 (i) IPC, 3(1)(R)(S) of SC/ST (POA) Act 3(2)(va) SC/ST Act and Section 307 PDPL Act.



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For Appellant : Mr.T.Saravanan
For Respondent : Mr.L.Baskaran (for R1)
Government Advocate (CrI. Side)
Mr.M.E.Rani Selvam (for R2)

J U D G M E N T

The Appeal has been filed against the Judgment made in Special Sessions Case No.1 of 2015, dated 02.07.2018 by the learned Principal Sessions Judge, Vellore, Vellore District for the offences under Section 451, 506 (i) IPC, 3(1)(R)(S) of SC/ST (POA) Act 3(2)(va) SC/ST Act and Section 3 PDPL Act.

2(a).Appeal filed against the order of acquittal. The Defacto Complainant/PW12/B.Parimala is the Appellant herein.

2(b).She preferred the complaint in Cr.No.138 of 2014 before the Vellore Sub Division, Vellore Taluk Police Station and FIR was registered and after investigation, Deputy Superintendent of Police, Vellore has filed final report alleging commission of offence u/s.451, 506 (i) IPC, 3(1)(R)(S) of SC/ST (POA) Act 3(2)(va) SC/ST Act and Section 3 PDPL Act.



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2(c).After observing the formalities, the case was numbered as S.C.No.01 of 2015. After trial, the learned Principal Sessions Judge, Vellore (Designated Court for SC/ST Act) has held that the charges are not proved and order of acquittal was passed and hence the Appeal.

3.Learned counsel for the Appellant/Defacto Complainant could contend that the Investigating Officer/PW14 has stated in his deposition that he has recovered broken plastic chair from the house of the Appellant through Form 95 and ought to have held that the case of the prosecution is proved.

4.Heard the learned counsel for the Appellant, learned Government Advocate (Crl. Side) and learned counsel for the second Respondent/Accused and perused the available records.

5.The case of prosecution is that, as per the evidence of PW12, on 17.03.2014 at about 5.30 pm the Accused came to the house of PW12, enquired PW2/Sampath and PW5 about the address of PW10. Then the accused came inside the house of PW12, damaged the Chair and TV. The accused also assaulted PW12 by abusing her by mentioning the caste such as “செருப்பு



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தைக்கும் செக்கிலி, உனக்கு இவ்வளவு திமிறா”, PW5/Meena eye witnessed the occurrence. PW3/Sundaram and PW4/Baby came to know about the occurrence later. PW12 informed the same to her husband and then both of them went to Kaniyambadi BDO office and gave complaint. That on 20.03.2014, PW12 gave complaint before Vellore Taluk Police Station. Then again PW12 gave complaint before Superintendent of Police, Vellore, which has been marked as Ex.P.6. The Deputy Superintendent of Police, Vellore came and enquired her. The broken chair was marked as M.O.1.

6.On perusal of the records, it is seen that the Accused is the resident of No.18, 1st Cross Street, Bharathi Nagar, Kaniyambadi Village, Vellore TK PS and working as an Assistant in Kaniyambadi BDO office and she belongs to “Hindu Viswakarma” community. The informant Parimala is the resident of Mettu Street, NSK Nagar, Kaniyambadi Block, Vellore Taluk and she belongs to Scheduled Caste community namely Hindu “Arundhathiyar”.

7(a).The two essential ingredients to substantiate the prosecution under Special Act is that (i) the Defacto Complainant should be a member of SC/ST community and the Accused should be a non member of SC/ST community and (ii) the Accused ought to have uttered caste word and acted against the property



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of the Defacto Complainant on the ground that she is the member of the scheduled caste.

7(b).As per Ex.P.3 & Ex.P.4 issued by the revenue witnesses, PW8/Sujatha, Tahsildar and PW9/K.Balakrishnan, Tahsildar, the Accused Jayanthi belongs to Hindu “Viswakarma” community and the Defactor Complainant PW12/Parimala belongs to Hindu “Arunthathiyar” community, which comes under the Schedule Caste/Schedule Tribe. In Ex.P.6/complaint and in the evidence of PW12, it is alleged that the Accused is a Government servant working in BDO office has committed criminal trespass and abused the Appellant with filthy language and uttered her caste and slapped her on cheek and hence the above two ingredients are found to be satisfied.

8.PW14/Deputy Superintendent of Police, Investigating Officer was appointed by the Superintendent of Police, Vellore by Ex.P.12 to conduct the case and to lay the charge sheet under the Special Act and hence, PW14 has power and authority to file the final report and the Accused/second Respondent was charged for the above stated offences.

9.To substantiate the charges, the prosecution examined PW1 to PW14



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and marked Ex.P.1 to Ex.P.15. Material objects M.O.1 was also marked on the side of prosecution.

10.PW12/Parimala is the Defacto Complainant. PW10 is her husband. PW1/Kannan is a close relative of PW10 and PW12. PW2/Sampath is residing opposite to the house of PW10 and PW12. PW13/Judicial Magistrate No.II, Vellore, recorded statement under Section 164 Cr.P.C., of Parimala/PW12, Baby/PW4 and Kannan/PW1. At the outset I find that except PW12 and PW10, all other witnesses were turned hostile. Whether the evidence of PW12 is reliable and trustworthy is the point to be considered.

11.After perusal of the oral and documentary evidence, it reveals that the complaint was marked as Ex.P.6. The Defacto Complainant was examined as PW12. PW12 has stated in the complaint that she has applied for housing loan and handed over the patta. When she went to the Chairman Office, her brother's father in law Kannan was in the said office. He asked her to get bill for him. When she approached the accused, she had demanded Rs.1,000/- and told that she passed the bill. When PW1 had given Rs.1,000/- to her husband and in turn her husband gave the same to the accused. When Chairman came, 10 persons including PW12 had waited there. At about 7.00 pm, on that day,



Jaikumar and accused came to her house. Accused had broken the Chair and TV. When her husband phoned and asked the accused about this, the accused had scolded PW1 also in filthy language about her caste. That the accused had also threatened PW12. So PW12 gave complaint.

12.The husband of the Defacto Complainant, PW10 is not an eyewitness to the occurrence and hence his evidence is only a hearsay. The other occurrence witness viz., P.Kannan was examined as PW1, who is also a close relative of PW10. During the investigation he has given statement under Section 164 of Cr.P.C., to the learned Judicial Magistrate, the same was marked as Ex.P.11. However, during the examination before the Court he has turned hostile. Hence, I find that PW10 evidence is merely a hearsay and has also turned hostile. Another occurrence witness PW4/Baby, who is also projected as occurrence witness has turned hostile and PW5/Meena who is yet another alleged occurrence witness also turned hostile and thus this Court finds that all the occurrence witnesses PW4, PW5 are turned hostile.

13.As stated supra, eventhough PW1 is the relative of PW10, the husband of PW12/Defacto Complainant, he has not supported the case of the prosecution and further from his evidence, it is seen that his evidence is only



hearsay and thus this Court finds that all the material witnesses PW1 & PW2 turned hostile and PW10 is found to be only a hearsay witnesses, alleged occurrence witnesses PW4 & PW5 are also turned hostile.

14(a).After going through the evidence of PW12, I find that it is a material contradiction with the evidence of PW10, except PW10 & PW12 all other private prosecution witnesses have turned hostile.

14(b).On a close perusal of the version of PW10 & PW12, the trial Court has rightly come to the conclusion that their respective versions are contradicting each other and there is a delay in registering the complaint also. The material witness by name Kannan/PW1 was also turned hostile. PW2 has not handed over the broken TV and in fact, the evidence of PW2 itself is a self contradiction between the complaint and statement recorded u/s.164 Cr.P.C., as could be seen from the evidence of the Investigating Officer/PW14 and thus, this Court finds that there is a delay in preferring the complaint for more than three days, which was not properly explained by the prosecution.

14(c).The main material witness PW1 has also not supported the case of the prosecution and turned hostile. The other two witnesses found to be only a



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hearsay. The alleged occurrence witnesses also turned hostile and in the evidence of PW10 & PW12, there is lot of material contradiction between their own versions and taking note of the above said facts, the learned Sessions Judge has come to the conclusion that PW12 & PW10 are not worthy of placing any reliance and accordingly acquitted the accused.

15(a).This Court keeps in mind the scope of the Appeal against the order of acquittal.

15(b).Though the point has been raised by the learned counsel for the Appellant that PW14/Investigating Officer have stated that he has recovered the broken plastic tin from the Appellant house, through Form 95, it remains to be stated that both the Mahazar witnesses PW6 & PW7 turned hostile and hence this Court is of the considered view that solely relying upon the police witnesses is totally unsafe, especially, when the case of the prosecution appears to be vitiated by infirmity and material witnesses having turned hostile, occurrence witnesses turned hostile and the witnesses though Husband & Wife as PW10 & PW12 deposed, their own version is found to be contradiction with each other and material particulars touching upon the essential ingredients of the charge and hence I find that the order of acquittal passed by the learned Sessions Judge



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does not warrant any interference.

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16. In view of the above, I do not find any reason to interfere with the well reasoned judgment of the trial Court and it does not suffer from any illegality or irregularity warranting interference in exercise of powers under Section 378 of Criminal Procedure Code. This Court has also taken note of the scope of the appellate Court under Section 378 of Criminal Procedure Code, as to the appeal against the order of acquittal. Accordingly, the Criminal appeal is devoid of merits and hence, dismissed. The judgment of acquittal passed in Special Sessions Case No.1 of 2015, dated 02.07.2018 passed by the learned Principal Sessions Judge, Vellore, Vellore District, is confirmed.

28.06.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
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1.The Principal Sessions Judge,
Vellore,
Vellore District

2.The Public Prosecutor,
High Court,
Chennai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated:28.06.2023