



Crl.A.(MD).Nos.147 and 91 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 06.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).Nos.147 and 91 of 2020

1.Egambaram

2.Ramasamy

... Appellants/Accused Nos.2 & 4

in Crl.A.(MD).No.147 of 2020

1.Kuppusamy

2.Nallasamy

... Appellants/Accused Nos.1 & 3

in Crl.A.(MD).No.91 of 2020

Vs.

1.The Deputy Superintendent of Police,
Karur Rural Division,
Karur District.

2.Selvan

... Respondents (In both the cases)

(R2 is suo motu impleaded as per order
of this Court dated 14.11.2022.)



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COMMON PRAYER : Criminal Appeals filed under Section 374 of the Criminal Procedure Code, to set aside the Judgment and conviction dated 27.01.2020, by the learned Sessions Judge, Karur, in S.C.No.85 of 2018, and acquit the appellants.

For Appellants : Mr.MA.Karunanithi
in Crl.A(MD).No.147 of 2020
For Appellants : Mr.G.Karnan
in Crl.A(MD).No.91 of 2020
For 1stRespondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
For 2ndRespondent : Mr.R.Gowri Shankar
Legal Aid Counsel
(in both the cases)

COMMON JUDGMENT

These Criminal Appeals have been filed to set aside the Judgment and conviction dated 27.01.2020, passed by the learned Sessions Judge, Karur, in S.C.No.85 of 2018, and acquit the appellants.

2. Since the appellants in all the appeals are arrayed as accused Nos.1 to 4 in the same crime number, these appeals are taken up together for hearing and disposed by way of this common judgment.



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3. The Brief facts of the prosecution case reads as follows:

On 16.05.2018, at about 11.30 a.m., the defacto complainant namely Selvan, along with his younger son namely Abhimanyu were returning to their house from their shop in a two wheeler. When they were about to cross the place known as Ichipatti Pirivu, a car bearing Registration No.TN 45 BA 1819 was driven in a rash and negligent manner and crossed the bike very close to the bike, eventually, the defacto complainant stopped his vehicle at the end of the road. Thereafter, the said car went ahead and stopped at a distance of 150 metres near one Usini Thottam. The defacto complainant and his son went there and questioned the driver of the car about the rash and negligent driving, during which, the driver of the car namely Kuppusamy (A1) has asked the defacto complainant whether he belonged to Velambadi colony and questioned him whether he is a member of Scheduled caste and also slapped him on his cheek. Thereafter, the said Kuppusamy (A1) has kicked the defacto complainant's son by his leg. The same was informed to the elder son of the defacto complainant through phone. Within 10 minutes, the defacto complainant's elder brother namely



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Saravanan came there and questioned the said Kuppusamy (A1) about the act. At that time, one Egambaram (A2) and one Nallusamy (A3), who were there also scolded them by using caste name. Further, they were said to have assaulted them by using wooden log and coconut leaf-stalk. At that time, one Ramasamy (A4) came there and he threw a stone on the defacto complainant and his sons. Thereafter, some of the villagers came there and rescued them and sent them to the Hospital. Based on which, the defacto complainant gave a complaint before P.W.13. The same was registered in Crime No.171 of 2018, for the offences under Sections 294(b), 323, 324, 336 and 506(ii) of IPC and Section 3(1)(r) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, (hereinafter, for the sake of brevity, referred to as “SC/ST (POA) Act”). Thereafter, P.W.14 conducted the investigation. During the course of investigation, P.W.14 altered the case into under Sections 294(b), 323, 324, 336 and 506(ii) of IPC r/w 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Act. Thereafter, the final report was filed by P.W.14 before the trial Court. After filing the final report, the same was taken on file in S.C.No.85 of 2018 by the learned Sessions Judge, Karur.



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4. The learned trial Judge after appearance of the accused served the copies under Section 207 Cr.P.C. Then, he framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

5. To prove the case, the prosecution examined P.W.1 to P.W.14 and exhibited 21 documents as Ex.P.1 to Ex.P.21 and produced 3 material objects as M.O.1 to M.O.3. Thereafter, all the accused were questioned under Section 313 Cr.P.C proceedings putting the incriminating evidence against them and they denied the same as false and thereafter, the case was posted for defence evidence. On the side of the appellants neither the defence witness was examined nor the documents were produced.

6. After considering the material adduced by the prosecution and also hearing the argument of the appellants and other accused, the learned trial Judge has passed the impugned order, dated 27.01.2020 and found the petitioners guilty, convicted and sentenced them as detailed below:-



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Accused	Convicted under Section	Sentence of Imprisonment/ fine imposed
A1, A2, A3 and A4	Section 294(b) of IPC	to pay a fine of Rs.1000/- each, in default to undergo Simple Imprisonment for one month each.
A1	Section 323 of IPC (2 counts) r/w Section 3(2) (va) of SC/ST (POA) Act.	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- (2 counts), in default to undergo Simple Imprisonment for one month.
A2 and A3	Section 323 of IPC (3 counts) r/w Section 3(2) (va) of SC/ST (POA) Act.	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- (3 counts), in default to undergo Simple Imprisonment for one month.
A4	Section 323 of IPC r/w Section 3(2)(va) of SC/ST (POA) Act.	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month.

Challenging the above said conviction and sentence, the petitioners have preferred these present Criminal Appeals.



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7. The learned counsel appearing for the appellants submitted that the learned trial judge erred in convicting the appellants under Section 3(2)(va) of the SC/ST (POA) Act, after acquitting the appellant under Section 3(1)(r) and 3(1)(s) of SC/ST (POA) Act. He further submitted that the prosecution failed to prove beyond reasonable doubt the offence under Sections 3(1)(r) and 3(1)(s) of SC/ST (POA) Act. There is no material against the appellants to convict them under Section 3(2)(va) of the SC/ST (POA) Act.

7.1. The learned counsel for the appellants further submitted that it is a counter case. The counter case ended into acquittal. Hence, the conviction and sentence passed against the appellants under Section 3(2)(va) of the SC/ST (POA) Act is not maintainable. According to the prosecution, the occurrence took place without any premeditation and without any intention. The occurrence took place suddenly when the accused drove the car in a rash and negligence manner and crossed the bike, which was driven by the defacto complainant. In the said occurrence, even



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as per the evidence of the witnesses, they questioned the defacto complainant only after ascertaining their place of residence. From that, it can be informed that there was no evidence to show that they intentionally caused humiliation against the defacto complainant regarding the caste. In the said circumstances, the conviction and sentence passed by the learned trial Judge is liable to be set aside. So far as the evidence under Sections 294(b) and 323 of IPC is concerned, the necessary ingredients are absent, upon perusal of the entire evidence of the defacto complainant and others witnesses. Hence, he seeks for acquittal.

8. The learned Additional Public Prosecutor, upon perusal of the materials placed before this Court and also judgment, submitted that even though the learned trial Judge acquitted the appellants under Sections 3(1)(r) and 3(1)(s) of SC/ST (POA) Act, the appellants have a knowledge about the defacto complainant's caste. Hence, the conviction under Section 3(2)(va) of SC/ST (POA) Act, is legally maintainable. He further submitted that the acquittal in the counter case is not a ground to acquit this case. The evidence of defacto complainant and other witnesses clearly prove the charges framed against the appellants.



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8.1. The learned Additional Public Prosecutor further submitted that the learned trial Judge considered the specific evidence available on record and convicted the appellants for the alleged offence under Sections 294(b) and 323 of IPC and Section 3(2)(va) of SC/ST (POA) Act. Hence, he seeks to confirm the conviction and sentence passed against the appellants, by the learned trial judge.

9. The learned legal aid counsel appearing for the defacto complainant reiterated the submission made by the learned Additional public prosecutor and submitted that there is abundant evidence to show that the appellants had knowledge about the caste status and residence of the defacto complainant and hence, he seeks to confirm the sentence passed by the learned trial Judge.

10. This Court perused the records and the documents adduced by the prosecution and the grounds raised by the appellants and reply made by the learned Additional Public Prosecutor and the legal Aid Counsel and the impugned judgment.



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11. The occurrence took place on 16.05.2018 at 11.30 a.m., when the car bearing Registration No.TN 45 BA 1819 was driven in a rash and negligent manner by A1 herein and crossed close to the bike, which was driven by the P.W.1/the defacto complainant and P.W.1 later, stopped the car. Thereafter, the defacto complainant questioned the rash and negligent driving of A1. At that time, A1 scolded P.W.1 by abusing his caste name and also assaulted him with hands. In the said circumstances, the remaining accused went to the occurrence place and there was a wordy altercation between the parties. Hence, both the parties made a complaint before the respondent Police with rival allegations. On the basis of the complaint given by both the parties, the cases were registered. Thereafter, the investigation was conducted and final report was filed. The counter case ended in acquittal. In the present case, the learned trial Judge disbelieved the evidence relating to abusing of the caste name under Section 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act and convicted the appellant under Section 3(2)(va) of SC/ST (POA) Act, which is not in accordance with law. When their evidence is disbelieved by the learned trial judge relating to the caste



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status, then it means that they had no knowledge about the caste of the defacto complainant and other witnesses. According to P.W.2's evidence, the first appellant in Crl.A(MD).No.91 of 2020 drove the vehicle in a rash and negligent manner in the main road close to the two wheeler, which was driven by P.W.1. Due to this, P.W.1 got annoyed. Hence, he questioned appellant/A1. From the sequence of the above events, it is clear that the appellants had no knowledge about the caste status of the P.W.1 and other witnesses.

12. The evidence of the P.W.1 and other witnesses are concerned, the appellant assaulted P.W.1 with hands. The investigating agency investigated the matter and examined number of witnesses to prove the said facts. In the said circumstances, this Court has no reason to disbelieve the version of the P.W.1 relating to the conviction under Sections 294(b) and 323 of IPC and Section 3(2)(va) of SC/ST (POA) Act.

13. The occurrence took place in a spur of moment, without premeditation and intention to cause humiliation to the defacto complainant and other members of the society.



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14. Considering the facts and circumstance of the case that there was no intention and premeditation to cause humiliation to the defacto complainant and others and also the fact that a settlement was arrived between the parties, the conviction passed by the trial Court for the offence under Sections 3(2)(va) of SC/ST (POA) Act is set aside. Insofar as the sentence for the offence under Sections 294(b) and 323 of IPC, is concerned, the sentence imprisonment of the appellants, as ordered by the Courts below, is reduced to the period already undergone by them.

15. Accordingly, these Criminal Appeals are partly allowed.

06.12.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No

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To:

- 1.The learned Sessions Judge,
Karur.
- 2.The Deputy Superintendent of Police,
Karur Rural Division,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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