



Crl.A(MD) No. 432 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.432 of 2016

Mokkaraj

.. Appellant

Vs.

The Deputy Superintendent of Police
Thirupparankundram Taluk
Astinpatti Police Station
Madurai

...Respondent

PRAYER : Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records pertaining to the above S.C.No.89 of 2015 on the file of the learned III Additional District and Sessions Judge, (PCR) Court Cases, Madurai and set aside the same and allow the above criminal appeal.

For Appellant : Mr.G.Mariappan

For Respondent : M/s.M.Aasha
Government Advocate(Crl.Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment and conviction passed in S.C.No.89 of 2015 on the file of the learned III Additional District and Sessions Judge, (PCR) Court Cases, Madurai



2. The trial Court has convicted the accused for the offences under Sections 506(i) of IPC and Section 3(i)(xi) of SC/ST(PoA) Act sentenced him to undergo six month rigorous imprisonment and to pay a fine of 500/- in default to undergo one month simple imprisonment for the offence under Section 506(i) of IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of 2000/- in default to undergo three month simple imprisonment for the offence under Section 3(i)(xi) of SC/ST(PoA) Act and acquitted the accused for the offence under Sections 4 of TNPHW Act and Section 3(i)(x) of SC/ST(PoA) Act.

3. The case of the prosecution is that the defacto complainant belongs to Hindu Paraiyar Community and the accused belongs to Non SC-Piranmalai Kallar community. The accused was the President of Karadikal Panchayat and on 06.02.2015 when the son of the defacto complainant went to his mother -in-law house the accused call the defacto complainant at about 10.30 pm., stating that there is no water to the villagers and thereby asked to bring motor room key and when the defacto complainant entered into the motor room the accused pulled her hand and the same was resisted by her and then she came out from the motor room at that time the accused used caste name “ஏண்டி பரச்சி உனக்கு அவ்வளவு திமிரா என்று மிரட்டி கொண்டு உன் மகன் என்னிடம் தான் வேலை பார்க்கிறான் அவன் வேலையை காலி பண்ணி



விடுவேன் and also caused criminal intimidation by saying that உன்னையும் கொலை செய்து விடுவேன் . Thereafter she went to her house and then narrated the same to her son and then after two days her sister-in-law came to house and she came know about the same. Thereafter they went to the police station and gave a complaint/Ex.P.1. Thereafter based on the complaint the Sub Inspector of Police registered First Information Report /Ex.P.4. Thereafter P.W11 was appointed as Investigation Officer in this case and he investigated the case, examined the witnesses and filed final report as against the accused persons.

4. After filing of final report copies were furnished to the accused under Section 207 of Cr.P.C and thereafter the Special Court has framed charges as against the accused for the offences under Sections 354 of IPC r/w. Section 3(1)(xi) of SC/ST(PoA) Act, 3(1)(x) of SC/ST(PoA) Act, 506(ii) of IPC and Section 4 of TNPHW Act and the charges were read over and explained to the accused and the accused denied the charges and thereafter in order to prove the charges levelled against the accused before the trial Court P.W.1 to P.W.11 were examined and marked Exhibits Ex.P.1 to P.7 and no material objects were marked. On the side of the defence no witnesses were examined and no document was marked.



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5. After completion of prosecution evidence the accused was examined under Section 313(1) (b) of Cr.P.C with regard to the incriminating evidence adduced against him and he denied the evidences. Thereafter the trial Court passed judgment by convicting the accused for the offences under Sections 506(i) of IPC and Section 3(i)(xi) of SC/ST(PoA) Act sentenced him to undergo six month rigorous imprisonment and to pay a fine of 500/- in default to undergo one month simple imprisonment for the offence under Section 506(i) of IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of 2000/- in default to undergo three month simple imprisonment for the offence under Section 3(i)(xi) of SC/ST(PoA) Act and acquitted the accused for the offence under Sections 4 of TNPHW Act and Section 3(i)(x) of SC/ST(PoA) Act

6. As against the judgment and conviction passed by the learned III Additional District and Sessions Judge, (PCR) Court Cases, Madurai the accused preferred appeal in Crl.A(MD) No.432 of 2016 on the following grounds:

a) the order of trial Court is against law, weight of evidence and probabilities of the case



b)the trial Court failed to consider the evidence of P.W.1 with regard to the intimation to her which is contra to the evidence of her Son P.W.2 and 8 respectively.

c) the trial Court failed to consider the evidence of PW.1 and is highly doubtful and the trial Court failed to prove the occurrence beyond reasonable doubts and the trial Court failed to consider that interested witnesses and other witnesses turned hostile.

d) As per the complaint the accused called the victim over phone and thereby she went to the place of occurrence and that too after 10.30 p.m., but the prosecution failed to collect call details and thereby the case of prosecution is highly doubtful and the above said discrepancies have not been considered by the trial Court.

7. The learned counsel appearing for the appellant would contend that the accused has been charged for the offences under Sections 3(1)(x) , 3(1)(xi) of SC/ST(PoA) Act, Section 354, 506(ii) of IPC and Section 4 of TNPHW Act and the trial Court acquitted the accused for the offence under Section 3(1)(x) of SC/ST(PoA) Act and Section 4 of TNPHW Act and convicted the accused for the offence under Section 506(i) of IPC and Section 3(1)(xi) of SC/ST(PoA) Act. There is a delay in lodging complaint



and the same has not been properly explained by the prosecution and the evidence of victim/P.W.1 is not trust worthy and these are major discrepancies and the same were not considered by the trial Court. The P.W.1 already supplied water on the date of occurrence at about 7.30 pm., itself then why P.W.1 came to the place of occurrence which is 3 kms away from her residence has to be explained by the prosecution but no explanation to that regard. There are major contradictions between the complaint and the evidence of P.W. 1 with regard to the commission of offence. Further the investigation officer failed to examine the villagers of the victim when she went to the place of occurrence in the night time. The said discrepancies have not been considered by the trial Court and wrongly convicted the accused, hence the appeal is liable to be allowed.

8. The learned Government Advocate(Crl.Side) appearing for the respondent would contend that the prosecution has examined P.W.1 to P.W. 11 and marked exhibits Ex.P.1 to Ex.P.7. The P.W.1 is the victim and she categorically deposed about the occurrence and P.W.4 who is the sister-in-law of the victim also deposed about the complaint given by the victim. The P.W.2 and P.W.7 are the sons of P.W. 1 and they also stated about the lodging of the complaint. The investigation officer also investigated the case and filed final report against the accused and he deposed about the fair investigation. After taking into consideration of all the evidences and



records the trial Court correctly convicted the accused and thereby this appeal is liable to be dismissed.

9. Upon hearing both sides and perusing the judgement of the trial Court and grounds of appeal the point for determination in this appeal is

a) whether the prosecution proved the charges levelled against the accused for the offence under Section 506(i) of IPC and Section 3(i)(xi) of SC/ST(PoA) Act beyond reasonable doubts

10. The case of the prosecution is that the appellant called the P.W.1/victim at about 10.30 pm., saying that there is no water to the villagers and asked to bring the motor room key and when the victim came there the accused misbehaved with her and also abused her using caste name and also threatened her with dire consequences, thereby the accused has been charged for the above said offences. In order to prove the case of prosecution P.W.1 to P.W.11 were examined and Exhibits Ex.P.1 to P.7 were marked and no material objects were marked. On the side of the defence no witnesses were examined and no document was marked. In this case the trial Court has framed charges under Section 354 of IPC r/w. Section 3(xi) of SC/ST Act but no separate charge has been framed for the offence under Section 354 of IPC. It is relevant to extract the provisions



under Sections 354 of IPC and Section 3(i)(xi) of SC/ST(PoA)Act.

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354: Assault or criminal force to women with intent to outrage her modesty- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing is to be likely that he will thereby outrage her modesty

3(i)(xi) of SC/ST(PoA)Act: Assaults or uses force to any woman belonging to a Scheduled Caste of a Scheduled Tribe with intent to dishonour or outrage her modesty.

11. On careful perusal of the said provisions of law both the offences are different in nature and punishable under different acts. As per Section 354 of IPC the words employed are whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, but in section 3(1)(xi) of SC/ST(PoA) Act the words employed are assaults or uses force to any woman belonging to a SC/ST with intent to dishonour has been incorporated in Section 3(1)(xi) of SC/ST (PoA) Act in addition to the word outrage her modesty. Further as per section 354 of IPC minimum punishment is not less than one year and maximum punishment is upto five years. As per Section 3(1)(xi) of SC/ST(PoA) Act minimum punishment is six months and maximum punishment is five years. Therefore both the sections are distinct offences under different Acts but charges were framed by the



trial Court under Section 354 of IPC r/w. Section 3(xi) of SC/ST Act and not framed separate charges under Section 354 of IPC, therefore the very framing of charge itself is not in accordance with law. As per Section 212 of Cr.P.C separate charges have to be framed for distinct offences but in this case trial court has not framed charges in consonance with Section 212 of Cr.P.C. The second charge is 3(1)(x) of SC/ST Act , third charge is under Section 506(i) of IPC and the fourth charge is under Section 4 of TNPHW Act. The trial Court had acquitted the accused for the offence under Section 3(1)(x) of SC/ST(PoA) Act and Section 4 of TNPHW Act and convicted the accused for the offence under Section 3(1)(x) of SC/ST(PoA) Act and Section 506(i) of IPC.

12. In this case P.W. 1 is the victim and she is the defacto complainant. There is no dispute with regard to the communities of the defacto complainant and the accused. It is admitted fact that the victim belongs to SC community and the accused belongs to non SC community. As per the evidence of P.W.9 and Ex.P.3 the victim belongs to non SC community. As per evidence of PW.10 and Ex.P.2 the accused belongs to non SC community. The alleged date of occurrence is on 06.02.2015 at about 10.30 pm., but the First Information Report has been lodged on 09.02.2015. The reason stated by P.W.1 for the delay is that she informed to her son and after arrival of her son complaint has been lodged and First



Information Report was registered. On perusal of the record it is seen that the complaint was given by the defacto complainant along with her sister-in-law. In this connection the prosecution has examined the Sister-in-law of the victim as P.W. 4 and she deposed that after two days from the date of occurrence she went to the house of victim at that time she was crying and while she asked about the same, she narrated the occurrence happened to her, immediately she called her to go to hospital and then she taken her to police station but in the complaint there is no accompany of P.W. 4 to the police station and P.W.4 also did not state anything about the accompany of P.W.2 and P.W.7 with regard to the lodging of complaint.

13. Further P.W.7 who is the younger son of the victim stated that on 07.02.2015 his mother made phone call to him and narrated about the occurrence and on the next day he came to his native village and lodged complaint and he also did not state anything about the accompany of P.W.3 and P.W.4. The evidence of P.W.2 and 7 who are sons of the victim are contra to the evidence of P.W.4 with regard to the lodging of the complaint. Therefore the theory of prosecution with regard to the delay in lodging of complaint is highly doubtful and not proved. P.W.1 who is the victim in this case has deposed that on 06.02.2015 her son who was working as pump operator went to his mother-in-law house and entrusted the motor room key to her. Already she was switched on the motor till 7.00 pm.,



and supplied water to the villagers, while so on the same day at about 10.30 pm., the accused made phone call to her and asked about her son and she stated that he had gone to his mother-in-law house.

14. Immediately he asked to bring the key of the motor room by stating that he was near the motor room and asked to bring key. Immediately she went there and gave the key at that time there was no current and when she came near the motor room the accused pushed her into the room and caught her hand, immediately she left aside and came out from the room. At that time the accused stated that your son is working under me and he will be removed from his work. Thereafter she ran away from the place and the accused waylaid her and compelled her to sit in the motor byke and at that time a lorry came there and after seeing the lorry she escaped from the accused. Thereafter on the next day when she was sitting in the bus stand one Devi and Sundar asked her about the complaint and she narrated the occurrence to them. Again the accused made phone call to her and then she went to her house and the sister-in-law enquired about her. At that time she narrated the same and she asked to give complaint before the police for that she told that her sons was not in town and then she made phone call to her son. Thereafter on 09.02.2015 she gave complaint before the Austinpatti Police Station and the same has been marked as Ex.P.1. As per the evidence of P.W.1 there is no whisper about



the abuse of caste name but in the complaint she has stated that the accused abused her using caste name.

15. Further as per the evidence of P.W.1 after occurrence she ran away but the accused waylaid her and compelled her to sit in the byke but the said version has not been stated in the complaint. Therefore these are the major discrepancies between the evidence of P.W.1 and the complaint with regard to the manner of occurrence. Further the alleged occurrence took place @ 10.30 p.m., but as per the evidence of P.W.1 she already supplied water to the villagers through motor at about 07.00 pm., itself. Whiles o why the victim went to the place of occurrence at about 10.30 pm., that too being a lady in night hours has to be explained by the prosecution but there is no proper explanation. Further as per the evidence of P.W.1, the accused made phone call to her and then she went to the place of occurrence but the prosecution failed to collect phone call details. Further P.W.1 in her cross examination stated that there is temple and some houses were situated near the motor room ie., place of occurrence but she has not raised any alarm. If she had raised alarm some people would have heard the alarm raised by her in the nearby house but the prosecution failed to investigate in that aspect and failed to examine the persons who were residing near the motor room.



16. Further there is no whisper in the complaint about the alleged compulsion of the accused to come in two wheeler, which are all creates serious doubts over the evidence of P.W.1 Further P.W.1 in her evidence stated that the complaint was given after three days during those period she consulted with her relatives and then she gave complaint. Therefore the prosecution case is highly doubtful and the evidence of P.W.1 does not inspire confidence to this Court. The other witnesses are not eye witnesses to the said occurrence and thereby their evidence is no way helpful to decide the case, Mahazhar witnesses have turned hostile. Further as per the prosecution the case was registered by one Stephen Raj but he has not been examined as witness and in this case the investigation officer was appointed by the District Superintendent of Police.

17. There is no dispute in this case that the victim belongs to Scheduled Caste community and the defacto complainant belongs to Non Scheduled Caste Community. P.W.11/Investigation Officer in his evidence admitted that he has not obtained call details of the accused and he admitted that near the place of occurrence Adhiparasakthi temple was there and he has not examined anybody from the said place. Further he admitted that he has not examined anybody from the locality of the victim. Further the Investigation Officer admitted that the distance between the motor room and the house of the victim is 3 kms, whileso how the victim went to



the place of occurrence that too in the night hours after 10.30 pm., from the house, this has not been explained by the prosecution and there is no proper explanation by the prosecution. Therefore the prosecution case is highly doubtful and further the trial Court has not framed proper questions while examining under Section 313(1)(b) of Cr.P.C and the entire evidence of the witness was framed as single question., thereby the incriminating circumstances has not been properly explained to the accused and thereby fair trial has not been conducted by the trial Court. Further in this case framing of charges and examination of accused under Section 313(1)(b) of Cr.P.C are all not proper and the evidence of prosecution also creates serious doubts, thereby the prosecution has failed to prove the charges levelled against the accused.

18. Even as per the prosecution P.W.1 on the next day of occurrence she she was sitting in the bus stand and at that time two persons namely Devi and Sundar were present in the bus stand and whey they enquired her she narrated about the incident to them. The prosecution has failed to examine the said Sundar and Devi. Further the trial Court in its judgment stated that since the accused pulled her hands and due to hesitation she has not given complaint but at the same time failed to consider that after the occurrence the next day she told the same to the villagers one Devi and Sundar. Thereafter she narrated the same to her



sons and her sister -in law. Therefore the decision rendered by the trial Court that since the accused pulled her hand and due to hesitation she had given complaint is not acceptable. Further the trial Court in the judgment discussed about the charges under Section 354 of IPC and since the offence under Section 3(1)(xi) of SC/ST(PoA) Act are one and the same and not inclined to convict the accused for the offence under Section 354 of IPC but there is no separate charge for the offence under Section 354 of IPC, thereby discussion about the charge under Section 354 of IPC by the trial Court is not in accordance with law. As far as offence under 3(1)(xi) of SC/ST(PoA) Act is concerned the evidence of P.W.1 victim is highly doubtful and trial Court also not framed proper charges, thereby the available evidence is not sufficient to prove the charges. Further there is no evidence that there was intention to the accused to dishonour or outrage the modesty of the victim. Further the trial Court in the judgment stated that though there is no evidence that the accused caused criminal intimidation that he would kill her, but P.W.1 stated that the accused caused threat by saying that he would remove her son from his office, this would constitute the offence under Section 506(i) of IPC, thereby convicted the accused for the offence under Section 506(i) of IPC.

19. In this context it is relevant to extract the provision under Section 503 of IPC, which reads as follows:



503. Criminal intimidation —

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

20. The above said words uttered by the accused would not come under the purview of Section 503 of IPC and no ingredients to constitute the offence and thereby the offence under Section 506(ii) of IPC would not attract and further the evidence of P.W.1 itself is doubtful and not trustworthy, but the trial Court without considering those aspects wrongly convicted the accused by holding that though the charge was framed under Section 506(ii) of IPC the available evidence proved the offence under Section 506(i) of IPC.

21. So far as section 506(i) of IPC is concerned there is no real threat caused to the victim by the accused. The victim in her evidence has not stated about the alleged criminal intimidation caused to her. As per the complaint /Ex.P.1 the accused caused criminal intimidation by saying that your son is working under him and he will dismiss him and also will murder P.W.1 but there is no evidence adduced by the P.W.1 with regard to the above said criminal intimidation. Charge was also framed under Section 506(ii) of IPC that the accused caused criminal intimidation that he would



kill her and your son is working in the office and he would be removed from office. But there is no piece of evidence to prove the same and the trial Court also failed to consider that the no single word was spoken by P.W.1 with regard to the alleged criminal intimidation. Further the prosecution has failed to prove the charges levelled against the accused by adducing sufficient evidence and hence the accused is entitled for acquittal.

22. The learned counsel appearing for the appellant has relied the following judgments:

a)Thangarasu and another .vs. The State, Deputy Superintendent of Police, Bhavani, Vellithirupput Police Station reported in 2010(1)MWN(Cr.)100

b)V.Ponnusamy.vs. The State, Deputy Superintendent of Police, Palladam range, Kamanaickenpalayam Police Station, Coimbatore District reported in 2016(3)MWN(Cr.)148

c) Muruganantham and other.vs. The Inspector of Police, Pollachi Taluk Police Station, Coimbatore District reported in 2016(3)MWN(Cr.)559

d) Singh @ Bhagavathsingh.vs The Deputy Superintendent of Police, Paramakudi Sub Division,, Emaneswaram Police Station reported in 2017(3)MWN(Cr.)207(DB)

e) Suresh.vs. The Deputy Superintendent of Police,



Thiruvidaimaruthur Sub Division, Thanjavur District reported in
2019(2)MWN(Cr.)212(DB)

f)Khuman Singh .vs. State of Madhya Pradesh reported in
2019(3)MWN(Cr.)155(SC) reported in 2019(3)MWN(Cr.)155(SC)

g) Hitesh Verma .vs. State of Uttarahand and another reported in
2020(3)MWN(Cr.)381 SC

g) M.Karthiga Priyadharshini.vs The Assistant Commissioner of
Police, Tirupur and others reported in 2021(2)MWN(Cr.)135

h)Patan Jamal Vali .vs. State of Andhra Pradesh reported in
2021(2)MWN(Cr.) 481SC)

23. On careful perusal of the above said judgments they will not be applicable to the present facts of the case because the said judgments are relating to Section 3(2)(v) of SC/ST(PoA) Act. In the case on hand no offence charged under Section 3(2)(v) of SC/ST(PoA) Act.

24. Therefore in view of the above discussions the charges levelled against the accused have not been proved by the prosecution beyond any reasonable doubts and the accused is entitled for acquittal. The judgment of conviction and sentence imposed by the trial Court are unsustainable and the same are liable to be set aside.



25. In the result, the Criminal Appeal is allowed and the judgment and conviction passed by the learned III Additional District and Sessions Judge, (PCR) Court Cases, Madurai in S.C.No.89 of 2015 are set aside and the appellant/accused is acquitted from the charges under Section 506(i) of IPC and Section 3(i)(xi) of SC/ST(PoA) Act and he be set at liberty subject to other cases if any. The bail bond, if any, executed by the appellant shall stand cancelled and fine amount, if any, paid by him is ordered to be refunded to him.

29.09.2023

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

1. The III Addl. District and Sessions Judge, (PCR) Court Cases, Madurai
2. The Deputy Superintendent of Police
Thirupparankundram Taluk
Astinpatti Police Station
Madurai
3. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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