



CRL. A. No.234/2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
23.07.2024	02.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO.234 OF 2021

1. Napoleon @ Nedunchezhiyan
2. Selvam
3. Rajadurai
4. Sekar
5. Kumar

.. Appellants

- Vs -

1. State by
The Dy. Superintendent of Police
Attur Sub Division
(Veeraganur Police Station)
Salem District.

2. Parameswaran

.. Respondents

Criminal Appeal filed u/s 374 (2) Cr.P.C. praying this Court to call for the records of the judgment dated 14.12.2020 in S.C. No.141 of 2015 on the file of the Principal Sessions Judge, Special Judge for Scheduled Castes and Scheduled



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Tribes (Prevention of Atrocities) Act, 1989, Salem, and set aside the conviction and sentence imposed by the trial court.

For Appellant : Mr. Karthik, SC, for
M/s. P.Jagadeesan

For Respondents : Ms. G.V.Kasthuri, APP for R-1
Ms. Anu Ganesan for R-2
(Legal Aid Counsel)

JUDGMENT

The judgment of the Principal Sessions Judge dated 14.12.2020 in S.C. No.141 of 2015 in and by which the appellants have been convicted and sentenced has been put to test by the appellants before this Court by filing the present appeal.

2. The appellants, who were arrayed as A-1 to A-5 stood charged for the offences as under :-

S. No.	Array of Accused	Section of Offence Charged
1	A-1, A-4 & A-5	U/s 147 IPC
2	A-2 & A-3	U/s 148 IPC
3	A-1 to A-5	U/s 294 (b) IPC



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4	A-1	U/s 323 IPC
5	A-2 to A-5	U/s 323 r/w 149 IPC
6	A-4 & A-5	U/s 323 IPC
7	A-1 to A-3	U/s 323 r/w 149 IPC
8	A-1 & A-3 to A-5	U/s 323 IPC
9	A-2	U/s 323 r/w 149 IPC
10	A-2	U/s 324 IPC
11	A-1 & A-3 to A-5	U/s 324 r/w 149 IPC
12	A-3	U/s 324 IPC
13	A-1, A-2, A-4 & A-5	U/s 324 r/w 149 IPC
14	A-1	U/s 3 (1)(r)(s) of SC/ST (PoA) Act as amended by Ordinance, 2014
15	A-2 to A-5	U/s 3 (1)(r)(s) of SC/ST (PoA) Act as amended by Ordinance, 2014
16	A-1 to A-5	U/s 3 (2)(va) of SC/ST (PoA) Act as amended by Ordinance, 2014

3. After trial, the accused were found guilty and were convicted and sentenced for the offences as under :-

S. No.	Array of Accused	Conviction & Sentence
1	A-1, A-4 & A-5	Convicted u/s 147 IPC and



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		sentenced to undergo RI for two years. Convicted u/s 294 (b) IPC and sentenced to undergo RI for 3 months. U/s 323 IPC (2 counts) and sentenced to undergo RI for two years for each count. U/s 324 r/w 149 IPC (2 counts) sentenced to undergo RI for two years for each count. U/s 3 (1)(r) of SC/ST (PoA) Act (2 counts) sentenced to undergo RI for three years and to pay a fine of Rs.1000/-, in default to undergo SI for 9 months for each count. U/s 3 (1)(s) of SC/ST (PoA) Act (2 counts) sentenced to undergo RI for three years and to pay a fine of Rs.1000/-, in default to undergo SI for 9 months for each count. U/s 3 (2)(va) of SC/ST (PoA) Act (2 counts) sentenced to undergo RI for two years and to pay a fine of Rs.1000/-, in default to undergo SI for 6 months for each count.
2	A-2	U/s 148 IPC sentenced to undergo RI for three years.



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		U/s 294 (b) IPC sentenced to undergo RI for three months. U/s 323 r/w 149 IPC (2 counts) sentenced to undergo RI for one year for each count. U/s 324 IPC (2 counts) sentenced to undergo RI for two years for each count. U/s 3 (1)(r) of SC/ST (PoA) Act (2 counts) sentenced to undergo RI for three years and to pay a fine of Rs.1000/-, in default to undergo SI for 9 months for each count. U/s 3 (1)(s) of SC/ST (PoA) Act (2 counts) sentenced to undergo RI for three years and to pay a fine of Rs.1000/-, in default to undergo SI for 9 months for each count. U/s 3 (2)(va) of SC/ST (PoA) Act (2 counts) sentenced to undergo RI for two years and to pay a fine of Rs.1000/-, in default to undergo SI for 6 months for each count.
3	A-3	U/s 148 IPC sentenced to undergo RI for three years. U/s 294 (b) IPC sentenced to undergo RI for three months.



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U/s 323 r/w 149 IPC (2 counts)
sentenced to undergo RI for
one year for each count.

U/s 324 IPC (2 counts)
sentenced to undergo RI for
two years for each count.

U/s 324 r/w 149 IPC sentenced
to undergo RI for two years for
each count.

U/s 3 (1)(r) of SC/ST (PoA) Act
(2 counts) sentenced to
undergo RI for three years and
to pay a fine of Rs.1000/-, in
default to undergo SI for 9
months for each count.

U/s 3 (1)(s) of SC/ST (PoA) Act
(2 counts) sentenced to
undergo RI for three years and
to pay a fine of Rs.1000/-, in
default to undergo SI for 9
months for each count.

U/s 3 (2)(va) of SC/ST (PoA) Act
(2 counts) sentenced to
undergo RI for two years and to
pay a fine of Rs.1000/-, in
default to undergo SI for 6
months for each count.



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The aforesaid sentences were directed to run concurrently. Aggrieved by the said conviction and sentence imposed on the respective accused, the present appeal has been filed assailing the said judgment.

3. The brief facts necessary for the disposal of this appeal are as under :-

There was a temple festival at Vinayagar and Mariamman Koil at Veppampoondi on 30.06.2014 in which there was a music program at 8.00 p.m. People in the said locality were listening to the said program and P.W.1 was also listening to the said program sitting at the front portion. At that time, some villagers asked P.W.1 to go to the back portion and A-1 also insisted P.W.1 to go to the back portion.

5. Following the said event, on 5.7.2014, at about 6.30 a.m., P.W.s 1 and 2 had gone to the Veppampoondi lake for the purpose of nature's call and at that time, A-1 along with A-2 to A-5 came there and castigated P.W.s 1 and 2 using their caste name and derogatorily addressed them using their caste name. There A-1 to A-5 assaulted P.W.s 1 and 2 with sticks and iron rod, while abusing them using the caste name. In the said P.W.s 1 and 2 suffered injuries on the head and



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over the other parts of the body. A-2 also caused injury on P.W.2 using koduval.

The attack on P.W.s 1 and 2 were separated by one Karuppiah, Mani and Kasilingam, who came there. Thereafter, Karuppiah and Kasilingam took P.W.s 1 and 2 to the Government Hospital, Attur.

6. P.W.s 1 and 2, on being produced before P.W.5, the Asst. Surgeon attached to Government Hospital, Attur, examined, P.W.s 1 and 2 and examined them. He found an aberrated injury on the left side forehead and one lacerated injury on the person of P.W.2 and when enquired, he informed that he was attacked by five known persons. The accident register copy issued in respect of P.W.2 is Ex.P-2.

7. P.W.5 also examined P.W.1 and found an aberrated injury on the left forehead and lacerated injury and upon enquiry, P.W.1 informed him that he was attacked by five known persons. The accident register copy issued in respect of P.W.1 is Ex.P-3.



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8. P.W.8, on receiving intimation from the hospital about the attack on P.W.s 1 and 2 came to the hospital and enquired P.W.s 1 and 2 and recorded their statements and returning back to the police station, he registered the complaint, Ex.P-1. He placed the complaint, the Accident Register copies, Exs.P-2 and P-3 before the Inspector of Police and on the directions of the Deputy Superintendent of Police, he coordinated with P.W.10 during investigation.

9. P.W.10, the Inspector of Police, on receiving the complaint along with the accident register copies from P.W.9 registered a case in Crime No.149/2014 for the offences u/s 147, 148, 324, 323 IPC r/w 3 (ii)(v) of SC/ST (PoA) Act by preparing Ex.P-13. The complaint and the Fir were forwarded to the Judicial Magistrate No.1, Attur, and also to the higher officials along with a request to nominate an officer for conducting investigation.

10. On receipt of the materials, P.W.11, the Deputy Superintendent of Police was nominated as the officer to conduct investigation and on taking up the investigation, on 5.7.2014, at about 6.00 p.m., P.W.11 proceeded to the scene of occurrence and in the presence of witnesses Chinnakozhandai and Anbazhagan



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and other witnesses, prepared observation mahazar, Ex.P-11 and drew the rough sketch, Ex.P-15. P.W.11 seized bloodstained koduvals, M.O.s 1 and 2 under the ocver of mahazar and the same were sent to Court under Form-91, Ex.P-16.

11. Continuing with the investigation, P.W.11 recorded the statements of P.W.s 1 and 2, Chinnakozhandai, Subramanian, Muthusamy, Karuppiah, Anbazhagan and other witnesses and recorded their statements. On receipt of information, P.W.11 arrested A-2 on he being identified by witnesses and he was sent to court for judicial remand. On 7.7.2014, P.W.11 arrested A-1 and sent him to court for judicial remand. Upon his transfer, P.W.11 entrusted the investigation to his successor.

12. P.W.12, the successor of P.W.11, on taking up investigation, went through the investigation conducted by P.W.11. thereafter, P.W.12 issued requisition to P.W.6 and P.W.7 to issue community certificate in respect of P.W.s 1 and 2 and A-1 to A-5. Accordingly, the community certificates, Exs.P-4 and P-5 in respect of P.W.s 1 and 2 and Exs.P-P-6 to P-10 in respect of A-1 to A-5 were issued by P.W.6 and P.W.7. He also examined the doctor, who had issued the



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accident register in respect of P.W.s 1 and 2. Upon completion of investigation, P.W.11 filed the final report against the accused for the offences aforesaid.

13. To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 12 and marked Exs.P-1 to P-17 and marked M.O.s 1 and 2.

14. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

15. The trial court, on consideration of oral and documentary evidence and other materials found the accused guilty and convicted and sentenced them as aforesaid. Aggrieved by the said conviction and sentence, the present appeal has been filed by the appellants.



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16. Learned counsel appearing for the appellants submitted that the case of the prosecution is a foisted one and except for the interested witnesses, no independent witnesses have been examined, which is detrimental to the prosecution case. It is the further submission of the learned counsel that though it is the specific case of the prosecution that the altercation between the accused and P.W.s 1 and 2 were separated by Kasilingam, Mani and Karuppiyah, who were stated to be present at the scene of occurrence, the said witnesses have not been examined. The non-examination of independent witnesses is fatal to the prosecution case.

17. In this regard, learned counsel, taking this Court through Sections 3 (1)(r)(s) of the SC/ST Act submitted that the act of demeaning the prosecution witnesses on the basis of caste should be done in public view, which would reduce the stature of the said persons amongst the public and if it is not in a public place within public view, the ingredients of the Section 3 (1)(r)(s) would not stand attracted. It is the submission of the learned counsel that though the act is alleged to have been committed in a public place, but in the absence of the same being viewed or heard by the public, the section would not stand attracted.



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If really the appellants had castigated P.W.s 1 and 2 in front of the public, viz., Mani, Kasilingam and Karuppiah, who are alleged to have been in the said place and separated the warring parties, necessarily the said witnesses ought to have been examined, which alone would establish the ingredients provided under the said section. The absence of their examination is not only not fulfilling the ingredients of the said section, but is detrimental to the prosecution case and, therefore, the offence alleged cannot be said to have been made out.

18. It is the further submission of the learned counsel that though P.W.3 had deposed in line with the evidence of P.W.s 1 and 2 with regard to the castigation meted out by the accused to P.W.s 1 and 2, yet, P.W.3 is related to P.W.1 and, therefore, he cannot be considered as a person falling with the meaning of public, as he is an interested witness. No other witness, who is alleged to have been present at the scene of occurrence had been examined by the prosecution.

19. It is the further submission of the learned counsel that insofar as the offence u/s 323 and 324 r/w 147 and 149 IPC are concerned, the evidence of



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P.W.5 would show that one cut injury had been found on both P.W.s 1 and 2 on the left forehead and P.W.s 1 and 2 have stated to P.W.5 that they were attacked by five known persons. However, the evidence of P.W.5 reveals that the doctor had not made any mention about the blood stains on the said injury and that the doctor had also deposed that it is possible that the said injury could have been sustained by P.W.s 1 and 2 if they had fallen down. Therefore, it is the submission of the learned counsel that in the absence of any clear material to show that the said injuries were caused by the appellants and in the absence of examination of any independent witnesses inspite of the fact that one Kasilingam and Mani were said to have been present at the scene of occurrence at the relevant point of time, the case as projected by the prosecution bristles not only with infirmities and contradictions, but also not amply supported by the evidences through the independent witnesses, which is necessary to make out a case against the appellants and, therefore, the conviction and sentence recorded by the court below cannot be sustained.

20. In support of the aforesaid submissions, learned senior counsel for the appellants placed reliance on the following decisions :-



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- i) *Swaran Singh & Ors. – Vs – State (2008 (8) SCC 435);*
- ii) *Priti Agarwalla & Ors. – Vs – The State of GNCT of Delhi & Ors. (2024 (7) SCALE 55)*
- iii) *Asmathunnisa – Vs – State of AP (Crl. A. No.766/2011 – Dated 29.03.2011);*
- iv) *Manimeglai & Ors. – VS – State (Crl. A. No.474/20099 – Dated 18.11.2016); and*
- v) *V.Ponnusamy – Vs – State (2016 (1) LW 761);Daya Bhatnagar & Ors. – Vs – State (2004 SCC OnLine Del 33).*

21. Per contra, learned Addl. Public Prosecutor appearing for the 1st respondent submitted that merely because independent witnesses have not been examined would not alone be sufficient to hold that the allegation as made by the prosecution against the appellants could not be sustained. It is the submission of the learned Addl. Public Prosecutor that so long as the evidence of the prosecution witnesses is convincing and is not tainted with contradictions, the court has to accept their version.

22. It is the further submission of the learned Addl. Public Prosecutor that P.W.s 1 and 2 were treated by P.W.5, the Doctor, who has found the injuries on the left forehead of P.W.s 1 and 2, which is spoken to by P.W.s 1 and 2 in their



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deposition as having been suffered due to the attack caused by the appellants.

The said deposition of P.W.s 1 and 2 is corroborated not only through the injuries sustained by them, but also by the deposition of the doctor, who has found injuries as alleged by P.W.s 1 and 2 and, therefore, there is no reason to doubt the deposition of P.W.s 1 and 2 that they were attacked by the appellants.

23. It is the further submission of the learned Addl. Public Prosecutor that P.W.3, who is a relative of P.W.1 would very much fall within the meaning of public person and in fact, he had heard the castigations made by the appellants about the caste of P.W.s 1 and 2, which would squarely attract Section 3 (1) (r)(s) of the SC/ST Act. It is the further submission of the learned Addl. Public Prosecutor that SC/ST (PoA) Act is a beneficial legislation, which has to be interpreted in favour of the members of the said caste and, therefore, the non-examination of independent witnesses cannot be a ground to hold that the prosecution case is not made out when there are no contradictions in the evidence of the other witnesses. All the above have been carefully considered by the court below while convicting and sentencing the appellants and, therefore, no interference is warranted with the same.



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24. Learned counsel appearing for the 2nd respondent, who was appointed by this Court to represent and protect the interests of the 2nd respondent, while sailed along with the learned Addl. Public Prosecutor, further submitted that the term *“in any place within public view”* found in Section 3 (1) (r) and (s) speaks only about the place and it does not speak about the necessity for examination of independent witnesses, as the said provision has been couched in such a fashion so that the persons belonging to the said caste do not suffer ignominy while castigated with the caste name in public. The hearing of such castigations by the public in a public place would be suffice to bring home the case against the appellants and necessity for examination of independent witnesses would not arise, so long as the said utterances are within public view.

25. In the aforesaid backdrop of the provision of law, it is the submission of the learned counsel that the place where the said utterances are alleged to have been made by the appellants against P.W.s 1 and 2 is a public place within public view and, therefore, the said sections would stand squarely attracted to



the case on hand and the offences are to be held as being made out against the appellants.

26. In support of the aforesaid submissions, learned counsel appearing for the 2nd respondent fairly placed before this Court the various decisions in which opinions have been given as to what would fall within the definition of “*within public view*” and the same are tabulated hereunder :-

- i) *II Addl. District & Sessions Judge (PCR), Tirunelveli & Ors. – Vs – Sankaranarayanan (2018 (2) MLJ (Crl) 385);*
- ii) *Daya Bhatnagar & Ors. – Vs – State (MANU/DE/0085/2004);*
- iii) *Swaran Singh & Ors. – Vs – State (2008 (8) SCC 435);*
- iv) *Surender Sharma – Vs – State of HP & Ors. (MANU/HP/1161/2024);*
- v) *Md. Sarifuddin Ansari & Ors. – Vs – The State of Jharkhand & Ors. (MANU/JH/1317/2019);*
- vi) *Balu B.Galande – Vs – State of Maharashtra & Ors. (MANU/MH/1421/2006)*
- vii) *K.Karnan & Ors. – Vs – The State of tamil Nadu (MANU/TN/0957/2024); and*
- viii) *Sk. Golam Murshed & Ors. – VS – State of West Bengal & Ors. (MANU/WB/0177/2022)*



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27. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the various decisions relied on behalf of the parties.

28. In the present case, the question is neither about the improvements, exaggerations and embellishments in the evidence of P.W.s 1 and 2 nor on the contradictions therein which are put in issue. The whole case of the appellants is premised on the non-examination of independent witnesses, outside of P.W.s 1 and 2 and relatives and caste members of the same group, which, according to the appellants is fatal to the prosecution case as absence of the evidence of independent witnesses would bring the act outside the scope of public view and, therefore, the mere evidence of P.W.s 1 to 3 would not be suffice to bring the offence with the ambit of the Section 3 (1)(r) and (s) of the SC/ST Act and the said provision, therefore, would not stand attracted. However, the appellants have not also admitted the utterances as alleged against them. In such a backdrop of the contention, it becomes necessary for this Court to find out as to what exactly *“in any place within public view”* found in Section 3 (1)(r) and (s) would mean and



what exactly was the intention of the Parliament when the said provision was enacted.

29. The Supreme Court had occasion to consider the expression “public place” and “public view” in *Swaran Singh case (supra)*, wherein the Apex 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 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***



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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.

29. Our Constitution provides for equality which includes special help and care for the oppressed and weaker sections of society who have been historically downtrodden. The SC/ST communities in our opinion are also equal citizens of the country, and are entitled to a life of dignity in view of Article 21 of the Constitution as interpreted by this Court. In the age of democracy no people and no community should be treated as being inferior. However, the truth is that in many parts of our country persons belonging to SC/ST are oppressed, humiliated and insulted. This is a disgrace to our country.

* * * * *

33. We have already stated above that in today's context even calling a person "chamar" ordinarily amounts to intentionally insulting that person with intent to humiliate him. It is evident from a perusal of the FIR that Appellant 1 Swaran Singh joined his wife and daughter in insulting Vinod Nagar, and he also used the word "chamar" in a derogatory sense. However, a perusal of the FIR shows that Swaran Singh did not use these offensive words in the public view. There is nothing in the FIR to show that any member of the public.



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was present when Swaran Singh uttered these words, or that the place where he uttered them was a place which ordinarily could be seen by the public. Hence in our opinion no prima facie offence is made out against Appellant 1.”

(Emphasis Supplied)

30. From the above ratio laid down by the Apex Court, it is manifest that it is not the place which has significance in the term “in any place within public view” and what is more material therein is “within public view”, which literally means that in the said place, excluding relatives or friends, there should be presence of other persons, who are independent of the occasion and who could be termed to be public who could witness the happenings in the said place. The intention of the Parliament is writ large in the inclusion of the words “within public view” as what fell important was that the act, which is being complained of, should have been visible and audible to public view, whereby the victims stature in the eyes of the public would stand diminished.

31. Similar question fell for consideration before Delhi High Court, before a learned Judge, in view of difference of opinion on the interpretation of the



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expression “public view” as could be found in Section 3 (1)(x) of SC/ST Act.

Answering the question placed, the learned single Judge, who was the nominated third Judge, answered the issue as under :-

“25. To conclude, I am in complete agreement with the interpretation put by Hon'ble Mr. Justice B.A. Khan to the expression "public view" in Section 3(i)(x) of the Act. But, with great respect to the learned brother Justice Khan, I have not been able to persuade myself to agree to the conclusion reached by him on facts. "Public view" envisages that public persons present there should be independent, impartial and not having any commercial or business relationship, or other linkage with the complainant. It would also not include persons who have any previous enmity or motive to falsely implicate the accused persons. However, merely because a witness, who is otherwise neutral or impartial and who happens to be present at the house of the victim, by itself, cannot be disqualified. Again, lodging of the counter FIR by the accused against witnesses of the earlier case would not ipso facto deprive them of their status as neutral witnesses, unless the attending circumstances suggest otherwise, like simultaneous lodging of cross FIRs where both parties are injured. Further, FIR also cannot be quashed because the complainant has died. Here the prosecution case is based not only on his statement but also the statement of four other persons. In short, each case would depend on its own facts and no strait-jacket formula of universal



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application can be laid down. In view of the above, no case for quashing of the FIR, at this stage, is made out and the matter should be left to be dealt with by the Trial Court where the challan has been filed and cognizance taken. More so, when on the report of some of the petitioners, in the counter case under Sections 354/34, IPC challan against the witnesses has also been filed.”

32. In yet another case, a learned single Judge of the Aurangabad Bench of the Bombay High Court in the case of *Balu B.Galande (supra)*, after considering the various decisions on the issue, which is of similar nature relating to the meaning of the term “*within public view*” held as under :-

“18. Considering the judicial pronouncements on the subject, the expression within public view must be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of at least one independent person. The test of audibility and visibility can be taken to have been satisfied if an independent person is actually present or is at a place where the utterances are clearly audible and reaches the scene of occurrence while the incident is still in progress. Turning to the present case, it can be seen that the first incident took place at the vasti of the complainant. Recitals of the complaint, however, do not refer to the presence of any member of the public. Considering the recitals of F.I.R. that the petitioner and his brother Haribhau were insulting the complainant by loudly shouting from their vasti, it



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can be seen that the element requiring presence of members of public is not disclosed by the allegations. As the condition, that the offence should have been committed within public view, is not satisfied, contention of learned Counsel for the petitioner, that the offence punishable under Section 3(1)(x) of SC and ST Act could not have been registered, will have to be sustained. In this view of the matter, the petition is allowed and the Rule is made absolute in terms of prayer clause (B) with no order as to cost.”

33. Though other decisions are also placed before this Court, however, the issue, as discussed above requires no multiplicity, as from the dissection made by the Courts in the above judgments, it is implicitly clear that the expression “*within public view*” should be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of atleast one independent person and only then the test of audibility and visibility can be taken to have been satisfied as the utterances should be clearly audible and it reaches the ears of the independent person. Further as held in *Swaran Singh case (supra)*, the Supreme Court has held that the place of utterance is immaterial, be it outside the building or inside the building, but it is the presence of members of the public



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alone, which is material to bring home the offence u/s 3 (1) (r) and (s) of the SC/ST Act.

34. Keeping in mind the ratio laid down above, analysing the evidence placed before the trial court, it is clear that apart from P.W.3, no other independent witness has been examined as P.W.s 1 and 2 are stated to be the victim. Though P.W.3 has been examined, however, he is not an independent witness, as P.W.3 is related to P.W.1 as he is the uncle of P.W.1. Fortuitous has been the circumstance, as projected by the prosecution, to bring P.W.3 to the said place of occurrence at the particular point of time. Barring the evidence of P.W.3, no other evidence has been placed by the prosecution to prove that the appellants have insulted and humiliated P.W.s 1 and 2 by calling their caste names, inspite of the fact that it is the specific case of the prosecution that one Mani and Kasilingam had also been present at the place of occurrence. Had either Mani or Kasilingam had been examined and they had also spoken in the same lines as has been deposed by P.W.s 1 to 3, then definitely, the provisions of Section 3 (1)(r) and (s) of the SC/ST Act would stand attracted. However, for reasons best known to the prosecution, the said persons have not been



examined as witnesses. If the said two persons, who are stated to have been present at the scene of occurrence at the point of time when such insult or humiliation was meted out to P.W.s 1 and 2, then necessarily the appellants could be held to have committed an offence u/s 3 (1) (r) and (s) of the SC/ST Act. But leaving the said persons outside the equation of being brought in as witnesses, the prosecution has not placed any conclusive material to establish that the alleged insult and humiliation was meted out to P.W.s 1 and 2 *within public view*.

35. When no independent witnesses have been examined, inspite of the fact that it is the specific case of the prosecution that there were independent witnesses present, such insult and humiliation alleged to have been heard by the general public and also viewed by the general public, having not been established, it would be wholly unsafe to rely on the evidence of P.W.s 1 and 2, who are the alleged victims of the crime and P.W.3, who is related to P.W.1, to bring home the charge against the appellants for the offences u/s 3 (1) (r) and (s) of the SC/ST Act.



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36. Insofar as the charge u/s 3 (2) (va) of the SC/ST Act is concerned, it relates to committing any offence specified in the Schedule against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member. As aforesaid, there could be no quarrel about the fact that P.W.s 1 and 2 belong to the scheduled caste or scheduled tribe community, as could be evidenced from Exs.P-4 and P-5. However, there is no material or evidence of any independent witness to infer that the appellants had castigated, insulted and humiliated P.W.s 1 and 2 using their caste name. In the absence of any such material, which points to such acts having been committed by the appellants, it would be wholly unsafe to convict the appellants for the offence u/s 3 (2)(va) of the SC/ST Act.

37. Insofar as the charges u/s 323, 324 and 323 r/w 147 & 148 and 324 r/w 147 and 148 IPC are concerned, the whole case of the prosecution is on the basis of the injuries alleged to have been sustained by P.W.s 1 and 2 at the hands of the appellants. However, barring the findings of this Court with regard to the occurrence proper, which has not been established through any proper evidence,



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the deposition of P.W.5, the doctor, who had treated P.W.s 1 and 2 states writ large on the face of the prosecution.

38. It is the deposition of P.W.5 that P.W.s 1 and 2 have suffered an aberrated injury on the left forehead and lacerated injury. However, the doctor had not made any markings in the accident register, Exs.P-2 and P-3 as to whether the said injuries are new injuries or old injuries. Further, it is the deposition of P.W.5 that he has not made any mention about whether the injuries are blood stained.

39. Further, a suggestion has been made by the defence to P.W.5 as to whether such injuries could have been suffered had P.W.s 1 and 2 fallen down for which P.W.5 had answered in the affirmative. Further P.W.5 had deposed that though he had issued Exs.P-2 and P-3 in respect of P.W.s 1 and 2, however, the markings made on the back of the accident register have not been written by him. The above writings on the back of Exs.P-2 and P-3 have not been explained by the prosecution nor the prosecution had placed any evidence to show as to who had made the said markings. Therefore, it is clear that there is



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interpolations in Exs.P-2 and P-3 and the prosecution had no answer as to who had made the interpolations.

40. When it is the clear evidence of the doctor, P.W.5 that there is no material to infer as to whether the injuries suffered by P.W.s 1 and 2 are new or old injuries and further the fact that there is no mention in Exs.P-2 and P-3 with regard to any blood stains on the injuries, having been noted by P.W.5, the projection of the case by the prosecution that the appellants had waylaid P.W.s 1 and 2 in the early morning hours of 5.7.2014 and had attacked them had not been established, more so, when there is no independent witness examined to speak about the offence, inspite of the fact that it is the case of the prosecution that one Mani and Kasilingam had witnessed the occurrence. The failure of the prosecution to examine independent witness, inspite of the alleged availability of independent witnesses to the occurrence casts a serious doubt on the version projected by the prosecution and in view of the aforesaid infirmities in the evidence as well as in the manner in which the trial has been conducted, this Court is of the considered view that it would be highly unsafe to convict the appellants on the basis of the aforesaid materials.



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41. Insofar as the offence u/s 294 (b) IPC is concerned, the acts, which are alleged to be obscene so as to attract the rigours of Section 294(b) IPC, has been considered by the Apex Court in the decision in **N.S.Madhanagopal & Anr. – Vs – K.Lalitha (2022 Live Law (SC) 844)**, wherein the Apex Court held as under :-

“It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt 4 those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in P.T. Chacko v. Nainan (1967 KLT 799) explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscenity’ in these words: “..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly



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followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth v. U.S.A., 354 US 476 (1957), Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harlan observed that in order to be 'obscene' the matter must "tend to sexually impure thoughts".

I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S. 294(b) IPC". 5 It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamatory words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the



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absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 (b) of IPC is made out.”

42. In the case on hand, as aforesaid, though it is alleged that the insult and humiliation had taken place in a public place within the public view, yet, no witnesses have been examined to show that the utterances of the appellants have annoyed anyone. In the absence of any person hearing the utterances, the charge u/s 294 (b) IPC does not stand established. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. In the light of the above, the conviction and sentence recorded by the court below is perverse and the same deserves to be interfered with.

43. For the reasons aforesaid, this criminal appeal is allowed setting aside the conviction and sentence imposed on the appellants vide judgment dated



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14.12.2020 in S.C. No.141 of 2015 by the Principal Sessions Judge, Special Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Salem. The appellants are acquitted of all the charges framed against them. It is informed that the appellants are out on bail. Bail bonds, if any, executed by the appellants shall stand cancelled. Fine amounts, if any, paid by the appellants, shall stand refunded.

44. This Court places on record its appreciation, dedication and the manner in which Ms.Anu Ganesah, legal aid counsel appointed by this Court to represent the 2nd respondent represented the case of the 2nd respondent before this Court. The legal aid counsel would be entitled to her fees and the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai, shall disburse the applicable fees to the legal aid counsel, Ms.Anu Ganesan, appointed by this Court. Registry is directed to mark a copy of this order to the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai, for the purpose of payment of fees to the legal aid counsel.



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45. Before parting with the case, this Court would like to highlight few aspects, which has come to the notice of this Court and on which deliberation needs to be made both by the investigating agencies as also by the trial courts.

46. True it is that SC/ST (PoA) Act is a beneficial piece of legislation, which has been enacted to safeguard the interests of the downtrodden and deprived communities/castes. When it is the duty of the Court to see that the downtrodden and deprived communities/castes are not humiliated and insulted on account of their caste by any person, equally, it is the duty of the Courts to see that the innocent persons are safeguarded from malicious prosecution. In this regard, a heavy burden is placed on the investigating agency not only to properly investigate the matter, but also to present the matter properly before the court at the time of trial, which alone would give the requisite benefits to the deprived castes. Careless and callous investigation would not only be in detriment to the deprived community/castes, but it would defeat the intention and reason for which the said law was enacted by the Parliament.



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47. Further, it is equally the duty of the investigating agency to see that malicious, false and frivolous complaints, giving the colour of insult and humiliation meted out to SC/ST community members are not made against persons for wreaking vengeance and it is the duty of the investigating agency to see that investigation is properly done so that the real perpetrators of the offence are brought to justice, while innocent persons are not harassed under the guise of investigation and trial. This Court hopes and trusts that henceforth the trial courts and the investigating agencies will keep the aforesaid in mind while taking up investigation/trial in cases relating to SC/ST (PoA) Act.

02.08.2024

Index : Yes / No

GLN

To

1. The Principal Sessions Judge
Special Judge for Scheduled Castes and Scheduled
Tribes (Prevention of Atrocities) Act
Salem.

2. The Deputy Superintendent of Police



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Attur Sub Division
(Veeraganur Police Station)
Salem District.

3. The Public Prosecutor
High Court, Madras.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
CRL. A. NO. 234 OF 2021**

Pronounced on



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02.08.2024