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Crl.A.No.203 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.203 of 2018

Assistant Commissioner of Police,
State represented by
The Public Prosecutor
High Court, Madras - 104
(W-4, All Women Police Station, Kilpauk,
Crime No.4/2011)

... Appellant

Vs.

1. Karna
S/o. Sundaram @ Sundaravadhanam
2. Thillaivanan
S/o. Sundaram
@ Sundaravadhanam

...Respondents

PRAYER: Criminal Appeal filed under Section 378(1) Criminal Procedure Code, 1973 to set aside the judgment passed in S.C.No.336 of 2012 dated 24.07.2017 by the Special Judge/Principal Sessions Judge, Chennai.

For Appellant	:	Mr.S.Rajakumar Additional Public Prosecutor (Crl.side)
For R1 & R2	:	Mr. C. Venkatesan Legal Aid Counsel
For Victim	:	M/s. S. Yogalakshmi Legal Aid Counsel



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JUDGMENT

Challenging the order of acquittal dated 24.07.2017 passed by the learned Sessions Judge, Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Chennai, in S.C. No.336/2012, the present appeal is filed by the prosecution/State

2. The respondents are the accused in S.C.No.336/2012 who stood charged for the following offences.

<i>rank of the accused</i>	<i>Charges</i>
A1	406, 377, 498-A and 420 IPC, Section 3(i)(xi) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act.
A2	498-A and 420 IPC, Sections 3(i)(xi) and 3(i)(xv) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 4 of Tamil Nadu Prohibition of Women Harassment Act.

After full trial the learned trial court judge acquitted the accused of the offences of which they were charged. Aggrieved over the same, the present



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Criminal Appeal is filed by the prosecution.

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3. The case of the prosecution in a nutshell is as follows:

3.1. Tmt. Sumathi (P.W.1) belongs to Scheduled Caste community as per the Community Certificate (ExP2) issued by the Tahsildar, Nungambakkam Taluk, Chennai.

3.2. The respondents/accused, who are brothers, belong to Mudaliar community. Tmt. Sumathi (P.W.1) lodged a complaint (Ex.P1) on 06.05.2011 with the Commissioner of Police, Egmore, stating that her husband (A1) refused to live with her as she belongs to Scheduled Caste Community and both A1 and his brother Thillaivanan (A2) abused her in filthy language and refused to take her to their house.

3.3. The complaint (Ex.P1) was forwarded to the Inspector of Police, All Women Police Station, Kilpauk. Tmt.M.G. Karunabai (not examined), the Sub Inspector of Police, W-6, All Women Police Station, Kilpauk,



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Chennai, registered an F.I.R. (Ex.P8) in Crime No.5/2011 against the respondents for the offences punishable under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short SC/ST Act) on 29.06.2011.

3.4. Thiru. Nandakumar (P.W.9) took up investigation in Crime No.5/2011 and examined the complainant and the other witnesses and recorded their statements. Since the offence took place at No.84, 18th Cross, V.S. Puram, T.P. Chaithiram, Chennai, he placed the records before the Deputy Commissioner of Police, Kilpauk District, Vepery, Chennai, who in turn, vide his proceedings dated 16.08.2011(Ex.P7), nominated the Assistant Commissioner of Police, Kilpauk Range, as Investigation Officer. Another F.I.R (Ex.P6) in Crime No.4/2011 of W4 All Women Police Station, Kilpauk, Chennai was registered on 07.10.2011 against the accused on the basis of the same complaint (Ex.P1).

3.5. Thiru. Lloyds Chandra (P.W.8), Assistant Commissioner of



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Police, Kilpauk Range, took up investigation and arrested the 2nd accused Thillaivanan on 07.10.2012 and produced him before the Special Judge under SC / ST Act for remanding him to judicial custody. Since P.W.8 was transferred, he placed the records before his successor Thiru.Rajaram (P.W.10), Assistant Commissioner of Police, Kilpauk. P.W.10 got a report (Ex.P5) dated 14.12.2011 from Thiru.Saravanan (P.W.7), the then Revenue Inspector, Purasawalkam, which stated that both the accused belong to Hindu Agamudaiyar Community.

3.6. P.W.1 in her deposition had stated that she married the first accused on 17.04.2005 and it was an arranged marriage. According to her the A1's family was aware of the fact that she belongs to Schedule Caste community. However, her husband (1st accused) used to abuse her in filthy language mentioning her caste name and also would come home only during night hours. It is her further contention that she was not given the status of a wife by the 1st accused and on 15.02.2010 when the marriage was fixed for the 2nd accused, she attended the marriage with her younger sister Ponmalar (P.W.2). According to P.W.1, even in the invitation card her name



was not mentioned as she belongs to Scheduled Caste community. When she attended the marriage with her sister she came to know that her husband (1st accused) was already married. P.W.1 also found her husband (A1) in a compromising position with his another wife Amrutha and when she confronted both Amrutha and the 1st accused, both of them abused her in filthy language mentioning her caste name. The 2nd accused also abused her mentioning her caste name in the presence of neighbours and pulled her dress. The neighbours, Shakila (P.W.3), Mehaboob Batsha (P.W.4) Ramesh (P.W.5) and Rajathi (P.W.6) witnessed the occurrence and they all requested her to leave the place as the accused would kill her. According to P.W.1, this incident took place on 12.06.2010. P.W.2 to P.W.6 corroborated the versions of P.W.1.

3.7. Thiru.Rajaram (P.W.10), after completing investigation, laid a final report before the II Metropolitan Magistrate, Egmore, Chennai, against the respondents/accused for the offences punishable under Sections 406, 377, 498-A and 420 IPC, Sections 3(i)(xi) and 3(i)(xv) of the SC ST Act and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, in



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P.R.C. No.172/2012. The learned II Metropolitan Magistrate committed the case to the Court of Sessions after furnishing copies of records to both the accused under Section 207 Cr.P.C.

3.8. The learned Special Judge (Special Court under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) Chennai, took the case on file in S.C. No.336/2012 and framed charges against both the accused as stated in paragraph No.1.

3.9. In order to bring home the guilt of the accused, the prosecution examined 10 witnesses and marked 8 documents.

3.10. The accused, when questioned with regard to the circumstances appearing in evidence against them under Section 313 Cr.PC, denied of having committed any offence. However, they did not adduce any oral and documentary evidence on their side.

3.11. The learned Special Judge, after analysing the oral and



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documentary evidence on record, acquitted both the accused vide her judgment dated 24.07.2017.

3.12. Aggrieved over the order of acquittal, the present Criminal Appeal has been filed by the State.

4. Heard Mr.S.Rajakumar, learned Additional Public Prosecutor (Crl.side), for the appellant State, Mr. C. Venkatesan, learned Legal Aid Counsel for the respondents and M/s. S. Yogalakshmi, learned Legal Aid Counsel for the victim.

5. P.W.1 in her complaint (Ex.P1) had not specified the date of the commission of the offence by the respondents/accused. Only in her deposition before the court, she had stated that both the appellant assaulted her and also pulled her dress and sent her out of the house. Though FIR is not an encyclopedia, the complainant is expected to state the minimum required facts leading to the crime committed by the accused. In the instant case it is pertinent to point out that the accused are charged for the offences



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punishable under Sections 406, 377, 498-A and 420 IPC, and Section 3(i)(xi) and 3(i)(xv) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act.

5.1. The prosecution also did not file the Community Certificate of the respondents/accused. Mr.S. Raja Kumar, learned Additional Public Prosecutor appearing for the State contended that it is not disputed by the accused that they belong to Mudaliar community. However, Shakila (P.W.3), who is the neighbour of the complainant had stated that the mother of the accused belongs to Mudaliar Community and their father belongs to Scheduled Caste Community. P.W.5 had stated that both the accused belong to Naidu community. It is not known on what basis Thiru. Saravanan (P.W.7), Tahsildar, Purasawalkam, had issued the report (Ex.P5) stating that both the accused belong to Hindu Agamudaiyar community. The Community certificates of the accused have not been filed by the prosecution before the trial Court.



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5.2. According to the prosecution, Shakila (P.W.3), Mehaboob Batcha (P.W.4), Ramesh (P.W.5) and Rajathi (P.W.6), the neighbours of the complainant witnessed the occurrence. P.W.4 had stated that she did not witness the occurrence and that before she could reach the place of occurrence, the quarrel between the accused and P.W.1 ended. According to her she was informed by the others that both the accused abused P.W.1 in filthy language mentioning her caste name. P.W.5 in his deposition had stated that he was not examined by the police and that he was asked by the police to give evidence in favour of the complainant (P.W.1). Rajathi (P.W.6) also could not remember the date and time of the offence and her evidence was that she was informed by Ponmalar (P.W.2), the sister of P.W.1 about the occurrence and she went there. Therefore, she had also not witnessed the occurrence.

5.3. It is also in evidence that P.W.1 had lodged a complaint against the 1st accused on 12.06.2010 and a challan was issued in CSR 213/K2/2010. Thiru,Lloyds Chandra (P.W.8), the Investigation Officer during the course of cross examination admitted this and he could not



remember the contents of the earlier complaint given by P.W.1. It was suggested to P.W.8 that in the complaint dated 12.06.2010, the complainant (P.W.1) had not mentioned that she was abused by the 1st accused in filthy language by mentioning her caste name. P.W.8 did not deny this and on the contrary, his answer to the suggestion was that he could not remember the same. When P.W.8 is able to remember CSR number and the date of the complaint, it is difficult to believe his version that he could not remember what the complainant had stated in her earlier complaint. Thus the case of the prosecution is not free from infirmities. The learned trial court judge had assessed the evidence properly and had come to a conclusion that the prosecution has not proved the case against the accused beyond reasonable doubt. In the circumstances, I do not see any reason to interfere with the same. Accordingly, the appeal stands dismissed.

6. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The judgment passed in S.C.No.336 of 2012 dated 24.07.2017 by the Special Judge/Principal Sessions Judge, Special Court under the



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Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

WEB COPY Act, 1989, Chennai, is confirmed.

iii. This Court places on record its appreciation to Mr. C. Venkatesan, learned Legal Aid counsel appearing for the respondents and Ms.S.Yogalakshmi, learned Legal Aid counsel appearing for the Victim, for their valuable assistance in deciding this case. The High Court Legal Service Committee shall pay fees in accordance with rules.

04.07.2024

Index : yes/no
Speaking /Non speaking Order
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Copy to

The Secretary,
High Court Legal Services Committee,
High Court Campus, Chennai 104.

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To

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1. Special Judge,
Special Court under the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989, Chennai.
2. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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