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CRL.A.NO.823 OF 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2023

JUDGMENT PRONOUNCED ON: 28 / 02 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.823 OF 2016

1.K.Karnan

2.E.Iyyappan

3.H.Selvakumar

4.T.Selvamani

5.S.Kumaravel

... Appellants

Versus

The State of Tamil Nadu

Rep. By Deputy Superintendent of Police

Kandamangalam Police Station

Villupuram District.

Cr.No.30 of 2013

... Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the proceedings in Special Sessions Case No.196 of 2015 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram and set aside the order of conviction dated December 9th, 2016 and set the appellants at liberty.

For Appellants : Mr.M.Devaraj



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CRL.A.NO.823 OF 2016

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For Victim / *defacto*: Mr.E.Senthilkumar
complainant

J U D G M E N T

This Criminal Appeal is preferred by the appellants assailing the 'judgment dated December 9th, 2016, in Special Sessions Case No.196 of 2015' (henceforth 'impugned judgment' for the sake of brevity) passed by the 'learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram' (henceforth 'Trial Court' for the sake of brevity) in which, they were convicted and sentenced as follows:



CRL.A.NO.823 OF 2016

Appellant's Rank	Provision under which convicted	Sentence
A1	147 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	148 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	335 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	3(1)(x) of SC/ST (POA) Act read with Section 149 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.2,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
A2	147 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	148 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	324 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	3(1)(x) of SC/ST (POA) Act read with Section 149 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.2,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
A3	147 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	148 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	324 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	3(1)(x) of SC/ST (POA) Act read with Section 149 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.2,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
A4	147 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	148 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	3(1)(x) of SC/ST (POA) Act read with Section 149 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.2,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS



CRL.A.NO.823 OF 2016

Appellant's Rank	Provision under which convicted	Sentence
A5	147 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	148 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.1,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	3(1)(x) of SC/ST (POA) Act read with 149 of IPC	Simple Imprisonment for ONE YEAR with a fine of Rs.2,000/-, in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	The period of custody already undergone by A1 to A5, if any, was given set off under Section 428 of Cr.P.C. The period of imprisonment was ordered to run concurrently.	

2.For the sake of convenience, henceforth the appellants shall be individually referred to as 'A1, A2, A3, A4 and A5' respectively and collectively referred to as the 'accused'.

3.The case of the prosecution, in brief, is as follows:

3.1.Accused belongs to 'Most Backward Community', whereas, victims/witnesses, namely Manikandan and Azhagu @ Azhaguvel belong to Scheduled Caste. Accused and victims are residing in same village viz., Seshanganur Village, Villupuram Taluk and District. On January 28th, 2013, since Manikandan (P.W.1) was suffering from diarrhoea. Manikandan and



CRL.A.NO.823 OF 2016

Azhagu @ Azhaguvel went to Hospital in a Motorcycle for taking treatment.

Post treatment, on their way back to their village, at about 17.45 hours, Manikandan stopped the Motorcycle to attend nature's call near a Banana grove belonging to one Vijayarangan. At that time, A2 and A3 came there and quarrelled with Manikandan (P.W.1) and Azhagu @ Azhaguvel (P.W.2). On hearing the quarrel, A1, A4 and A5 who were playing in the playground came there. The accused were armed with iron pipe and wooden log. A1 assaulted Manikandan (P.W.1) in the left hand elbow with iron pipe and caused grievous injury. A2 assaulted Manikandan (P.W.1) in the left thumb with wooden log and caused grievous injury. A3 assaulted Azhagu @ Azhaguvel in his head with iron rod and caused simple injury. Further, the accused verbally abused Manikandan (P.W.1) and Azhagu @ Azhaguvel (P.W.2) by uttering their caste name and by using offensive language. Then, Manikandan (P.W.1) went to hospital with the help of his brother Chandrasekar and was admitted there as in-patient.

3.2. On intimation, the then Sub-Inspector of Police came to the Hospital and recorded complaint statement (Ex-P.1). Based on Ex-P.1, an FIR



CRL.A.NO.823 OF 2016

(Ex-P.5) was registered under Sections 147, 148, 294(b), 324 of 'The Indian Penal Code, 1860' ('IPC' for short) read with Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST (POA) Act' for short) against the accused.

3.3.The Superintendent of Police, Villupuram District, vide his proceedings dated January 28th, 2013 (Ex-P.8) nominated Mr.G.Sekar, the then Deputy Superintendent of Police of Villupuram District (P.W.10) as the 'Investigating Officer' (henceforth 'Investigating Officer-I'). The Investigation Officer-I inspected the place of occurrence on January 29th, 2013 in presence of witnesses namely Sivakumar (P.W.6) and Vadivel (P.W.4) and prepared observation mahazar (Ex-P.9) and rough sketch (Ex-P.10). Thereafter, he obtained the community details of Manikandan (P.W.1) and the accused. Thereafter, at about 12.30 hours on January 29th, 2013, he arrested A3 and A5 and remanded them to judicial custody on the same day. Thereafter, he enquired Sub-Inspector of Police Mr.Sethuraman (P.W.8) who registered FIR (Ex-P.5) and recorded his statement. At that stage, Investigation Officer-I was transferred. Hence, he handed over the case file to the office.



CRL.A.NO.823 OF 2016

3.4.Mr.Sankar (P.W.11) the 'then Deputy Superintendent of Police, Villupuram Sub-Division' (henceforth 'Investigation Officer – II) took on the investigation and on completion of the investigation, he filed charge sheet dated June 10th, 2013, under Sections 147, 148, 294(b), 324, 325 and 326 of IPC read with Section 3(1)(x) of SC / ST (POA) Act against the accused before the Judicial Magistrate No.II, Villupuram on January 30th, 2014.

3.5.The learned Judicial Magistrate No.II, Villupuram, registered the case in P.R.C.No.8 of 2014 on January 31st, 2014 and furnished copies of the documents to the accused under Section 207 of 'The Code of Criminal Procedure, 1973' [henceforth 'Cr.P.C.' for the sake of brevity]. Since offences involved are under SC/ST (POA) Act, the learned Magistrate committed the case to the designated Special Court under SC/ST (POA) Act, 1989 (Principal Sessions Court, Villupuram) as per Section 209 of Cr.P.C.

3.6.The, then designated Special Court for cases under SC/ST (POA) Act (Principal Sessions Judge, Villupuram) after perusing the records and hearing both sides, framed the following charges against the accused:



CRL.A.NO.823 OF 2016

<i>Rank of the accused</i>	<i>Charges framed</i>
A1	147, 148 and 326 of IPC and 3(1)(x) of SC/ST (POA) Act read with 149 of IPC
A2	147, 148 and 326 of IPC and 3(1)(x) of SC/ST (POA) Act read with 149 of IPC
A3	147, 148 and 324 of IPC and 3(1)(x) of SC/ST (POA) Act read with 149 of IPC
A4	147 and 148 of IPC and 3(1)(x) of SC/ST (POA) Act read with 149 of IPC
A5	147 and 148 of IPC and 3(1)(x) of SC/ST (POA) Act read with 149 of IPC

3.7.The charges were read over and explained to the accused. The accused denied the charges as false and pleaded not guilty. Hence, trial was ordered.

3.8.Thereafter, the Trial Court was constituted as the Exclusive Special Court under Section 14 of the SC/ST (POA) Act vide G.O.(Ms) No.793, Home (Courts-II) Department, dated 07.10.2013. In view of the same, the Principal Sessions Judge, Villupuram transferred the case to the Trial Court.

3.9.To prove its case, the prosecution examined P.W.1 to P.W.11 (Witnesses) and marked Ex-P.1 to Ex-P.10 (Documents). The defence side neither examined any witnesses nor marked any documents. No Material Objects were marked by either side. The incriminating evidence against the



CRL.A.NO.823 OF 2016

accused available on record were put forth in the form of questions to the accused under Section 313 of Cr.P.C., and the accused denied the same as false.

3.10.The Trial Court after hearing either side, concluded that the charges against the accused are proved and convicted and sentenced the accused as stated supra in paragraph no.(1).

3.11.Feeeling aggrieved with the Conviction recorded and the Sentence imposed by the Trial Court, the accused have preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

Arguments

4.The learned counsel for the accused argued that the accused did not commit any offence as alleged; that the accused did not insult or intimidate Manikandan (P.W.1) and Azhagu @ Azhaguvel (P.W.2) with an intention to humiliate them in public view; that the alleged ocular witnesses viz., P.W.3 and P.W.4 belong to Scheduled Caste and they are closely related



CRL.A.NO.823 OF 2016

to P.W.1 and P.W.2; that there are no independent witness in this case to prove the alleged offence; and that according to prosecution's case, place of occurrence is a Banana Grove and it is neither a public place and nor a place in public view. Further he submitted that Rule 7 of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 is mandatory in nature and the same has not been adhered to in this case. Further he submitted that the prosecution has falsely registered a case against the accused; that the prosecution has not proved the genesis of the crime and the genesis alleged is suspicious; that the evidence of P.W.1 and P.W.2 are false and exaggerated; and that the alleged occurrence is improbable and accordingly, he prayed to allow the appeal by granting benefit of doubt to the accused. In support of his argument, the learned counsel relied on a judgment of the Hon'ble Supreme Court in ***Ramesh Chandra Vaishya Vs. State of Uttar Pradesh and Another*** reported in **2023 SCC ONLINE SC 668**.

5.Per contra, learned Additional Public Prosecutor has submitted that P.W.1 and P.W.2 are injured witnesses and their evidence is believable



CRL.A.NO.823 OF 2016

and trustworthy; that evidence of P.W.1 and P.W.2 is supported by medical evidence; that there is no reason to disbelieve the evidence of P.W.1 and P.W.2; that the Trial Court after considering the facts and circumstances of the case, came to the conclusion that the accused committed the offences as stated *supra* and that there is no warrant to interfere with the impugned judgment. Accordingly, he prayed to dismiss the appeal and sustain the conviction and sentence.

6.The defacto complainant engaged an Advocate and appeared before this Court. Learned counsel for the defacto complainant / victim argued along the lines of the Additional Public Prosecutor. In addition, he relied on the authorities in *Swaran Singh and Others Vs. State [2008 (8) SCC 435]; Bhole and Others Vs. State of Madhya Pradesh [CRL.A.No.889 of 2012 Dated AUGUST 16TH, 2023]; State of H.P. Vs. Lekh Raj and Another [2000 (1) SCC 247]; Kamlesh Vs. State [2023/DHC/000051]* and *Modi's Medical Jurisprudence and Toxicology - 6th Edition Pg.301.*

Point for consideration

7.This Court has heard either side and perused the case file. The



following points arise for consideration.

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(i) Whether the charges under Sections 147, 148 and 326 of IPC are proved beyond reasonable doubt against A1 and A2?

(ii) Whether the charges under Sections 147, 148 and 324 of IPC are proved beyond reasonable doubt against A3?

(iii) Whether the charges under Sections 147 and 148 of IPC are proved beyond reasonable doubt against A4 and A5?

(iv) Whether charge under Section 3(1)(x) of SC/ST (POA) Act has been proved against the accused beyond reasonable doubt?

(v) Is there any reason to interfere with the Trial Court's judgment?

Discussion and Decision for Point Nos.(i) to (v)

8.P.W.1 in his complaint (Ex-P.1) has stated that on January 28th,



CRL.A.NO.823 OF 2016

2013 at about 17.45 hours, he went to attend nature's call near the Banana Grove situated on the eastern side of north-south road. The Investigation Officer -I prepared observation mahazar (Ex-P.9) and rough sketch (Ex-P.10). The said documents were marked through Investigating Officer – I. This aspect of Investigating Officer's evidence has been corroborated by the evidence of P.W.1 to P.W.6. In short, prosecution has proved the place of occurrence. In Ex-P.10, place of occurrence has been shown with a 'X' mark. The said place is situated in between the north-south road and the Vijayarangan's Banana Grove (Near the banana grove).

8.1.In Ex-P.1 complaint, it has been stated that while P.W.1 was attending nature's call in the place of occurrence, A2 and A3 came there and knocked down the Motorcycle. Upon P.W.1 questioning their act, A1 and A2 verbally abused P.W.1 and P.W.2 by uttering their caste name and quarrelled with them questioning them back as to why was he attending nature's call in that place? On hearing the quarrel, ten or more persons came there. A1 to A3 attacked P.W.1 and P.W.2 with iron rod and wooden log. Due to which, he suffered injury on his left thumb finger and P.W.2 suffered a head injury.



CRL.A.NO.823 OF 2016

Then, both went to Venkateswara Hospital and received treatment.

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8.2.P.W.1 in his evidence deposed that on January 28th, 2013 at about 17.45 hours, while he was attending nature's call near Vijayarangan's Banana Grove, A1 and A2 came there and questioned him by uttering 'பற தேவிடியா பசங்களா உங்களுக்கு இங்கு என்னடா வேலை?' and A1 assaulted him with iron rod on his right hand; that A2 assaulted him with wooden log on his left hand and that A3 attacked P.W.2 with iron rod on his head.

9.P.W.2 in his evidence deposed that on January 28th, 2013 at about 17.00 hours, he and P.W.1 went to hospital for treatment as P.W.1 was suffering from diarrhoea; that after receiving treatment, he and P.W.1 were returning on their way back to their village; that they stopped as P.W.1 wanted to attend nature's call near the Vijayarangan's Banana Grove; that at the time, A2 came there and questioned P.W.1 and P.W.2 and verbally abused them by uttering P.W.1 and P.W.2's caste name; that A1 assaulted P.W.1 with wooden log on his right hand and A2 assaulted P.W.1 on his left thumb with iron pipe; and that while he tried to prevent the incident, A3 attacked him



CRL.A.NO.823 OF 2016

with iron pipe on his head. Further, he deposed that A4 and A5 also attacked and abused them by uttering their caste name. In his cross examination, he deposed that he informed the Doctor that he was attacked with knife by known persons.

Ocular witness

10.The prosecution examined P.W.3 and P.W.5 as ocular witnesses. In the evidence of P.W.3, he deposed that A1 to A3 attacked P.W.1 and P.W.2 with iron rod and wooden log. P.W.3 belongs to Scheduled Caste. He further deposed in the line with P.W.1 and P.W.2.

11.P.W.5 is an another ocular witness. He deposed that A2 attacked P.W.1 with iron pipe on his head and A3 attacked P.W.2 on his hand with wooden log; that A1, A4 and A5 damaged the Motorcycle of P.W.1; and that accused persons verbally abused P.W.1 and P.W.2 by uttering their caste name.

12.P.W.4 is the observation mahazar witness. He did not support the prosecution case. However, he admitted that on January 29th, 2013, at



CRL.A.NO.823 OF 2016

about 09.00 hours, when he and Sivakumar were on their way to work, while they were approaching near Vijayarangan's Banana Grove, police came there and asked them to sign in a blank paper. He admitted the signature found in Ex-P.2 as his signature. The prosecution cross examined him after obtaining permission from Court. Though P.W.4 did not fully support the prosecution's case, his evidence shows that on January 29th, 2013, police visited the place of occurrence and prepared observation mahazar and rough sketch. Investigating Officer – I (P.W.10) in his evidence has deposed that he visited the place of occurrence on January 29th, 2013 and prepared rough sketch and observation mahazar. To be noted, rough sketch and observation mahazar are dated January 29th, 2013 and the same were received by the learned Judicial Magistrate on January 29th, 2013 i.e., on the same day. In view of evidence of Investigating Officer-I (P.W.10) this Court is of the view that the prosecution proved the time of occurrence beyond reasonable doubt.



CRL.A.NO.823 OF 2016

13.Dr.Prabu (P.W.9) who gave treatment to P.W.1 and P.W.2 deposed that on January 28th, 2013 at about 17.20 hours when he was on duty at Venkateswara Hospital, Manikandan (P.W.1) came there along with his brother Chandrasekar. He further deposed that at that time, P.W.1 told him that he was assaulted by ten known people at 17.45 hours near Seshanganur by using wooden log. He had noted the following injuries on the body of P.W.1:

- “(i)Severe pain in left forearm*
- (ii)Contusion (LT) forearm 5X5 cm*
- (iii)Thumb pain”*

13.1.He admitted the patient as in-patient and gave treatment for injury no.(i) and (ii). He further deposed that he referred the patient to Orthopedist for opinion. He further deposed that X-ray was taken for injury no.(ii). Based on the Orthopedist's opinion, he opined that injury no.(ii) is a grievous injury and injury no.(i) is a simple injury.

13.2.He further deposed that on the same day, at about 19.20 hours, Azhagu @ Azhaguvel came there accompanied by Chandrasekar. At



CRL.A.NO.823 OF 2016

that time Azhagu @ Azhaguvel (P.W.2) told him that he was assaulted by known people at 17.45 hours near Seshanganur by using knife and got injured on the parietal region of the head.

14.P.W.9 had examined P.W.2 and noted the following injuries on P.W.2's head:

- (i)Right parietal region 5 X 1 cm laceration*
- (ii)Hamotoma 3X3 cm of left malkoans*

P.W.9 opined that the above injury is simple in nature. To that effect, Ex-P.7 for P.W.2 is issued.

15.It is apposite to mention here that the X-ray allegedly taken to P.W.1 is not annexed along with charge sheet. The said X-ray was not marked in the case. Prosecution has not attributed any explanation in this regard. Further, the aforementioned Orthopedist who allegedly gave treatment was not examined by Investigating Officer and he was not examined before the Court. Ex-P.6 was issued by the Medical Officer of Sri Venkateswara Medical College Hospital, Ariyur wherein it is noted as follows:



CRL.A.NO.823 OF 2016

“Opinion:

'As advised by the C.M.O. The X-ray was taken by the patient, but, the X-rays are not available with this patient for opinion. So opinion could not be given.

Sd/-

31-5-13”

16.Before the above opinion, another opinion is there which reads as follows:

“X-ray shows distal phalanx of left thumb. The above mentioned injury is grievous in nature.

Sd/-

(Dr.R.Balaji)

CMO”

17.In view of the two contradictory opinions' made in the Accident Register, alluded *supra*, the prosecution ought to have examined the Orthopedist who gave treatment. The above view of this Court is fortified by Division Bench of Punjab and Haryana High Court in ***State of Haryana Vs. Prem Singh reported in 2007 SCC Online P&H 207***. In para 11, it is held as



follows:

“11.Out of the two injuries suffered by him one is superficial incised wound over palmer aspect of distal phalanx of right thumb was present. Dr.Amar Bajaj (PW-1) opined vide opinion Ex. PE-1 that the injury No.1 was dangerous to life on the basis of the x-ray report, yet the Radiologist, who x-rayed the injuries had not been examined. Therefore, the opinion given by Dr.Amar Bajaj (PW-1) could be of no avail. The reference, if any can be made to a judgment titled as Santoo v. State, 1977 Crl.L.J. (Notes) 2 wherein it was observed as under:

“An x-ray report of the injury caused to the complainant was prepared by 'A'. Prosecution did not produce 'A' before the Court. It was not suggested that 'A' was either dead or not available. A Supplementary report was prepared by 'B' on the basis of the x-ray report prepared by 'A'. It was held that 'A's report was inadmissible in evidence. So also the evidence of 'B' based on his supplementary report prepared on the basis of the x-ray report of 'A' was also inadmissible in evidence.”

18.The above ratio has been followed by Punjab and Haryana High Court in ***Bawa Singh Vs. State of Punjab [CRR No.1789-2013 decided on March 2nd, 2020]*** wherein it is held as follows:

“...the doctor, who conducted the X-ray examination of injured Binder Singh, was not examined. So, opinion of the



doctor Ex.PW-6/C is not sufficient to come to the conclusion that injury No.2 on the person of Binder Singh was grievous in nature. It is the duty of the prosecution to prove each and every fact beyond shadow of doubt on the file. If there is any doubt then benefit goes to accused. Since, the prosecution failed to prove beyond doubt that injury No.2 was grievous in nature, so I am of the view that the learned trial Court has wrongly decided point No.3 that injury No.2 on the person of Binder Singh was grievous in nature. The accused were wrongly convicted under Section 326 and 326/34 of the IPC whereas the accused were required to be 3 of 14 convicted under Section 324 and 324/34 of the IPC.”

19.In the absence of X-ray and medical evidence of Orthopedist, this Court is of the view that the prosecution miserably failed to prove that P.W.1 sustained any grievous injuries. This Court concluded that P.W.1 and P.W.2 sustained only simple injuries. The above view is fortified by the Kerala High Court in ***P.Johnson and Others Vs. State of Kerala [1998 SCC Online Ker 477 = 1998 Crl LJ 3651]***. In para 6 of the above decision, it is held as follows:

“ 6.Even regarding the conviction brought under Section 326 there is no legal evidence to fix the criminal liability. Section 320 I.P.C., defines grievous hurt. Fracture



CRL.A.NO.823 OF 2016

comes under this Section. PW-7 doctor who examined PW-12 in the medical college hospital, Calicut issued Ext.P-6 discharge certificate which goes to show that PW-12 sustained grievous hurt. PW-7 in this context would depose that he gave Ext.P-6 certificate on the basis of X-ray report and that report was not produced and the doctor who took X-ray was not examined. Non-production of the X-ray report and non-examination of the doctor who took the X-ray are sufficient to deduce that the criminal liability either under Section 325 or 326, I.P.C. is not established. This flaw is also a stronger one shaking the case of the prosecution.”

In the absence of X-ray and Orthopedist's opinion, the evidence of P.W.9 cannot be construed as a conclusive evidence. His evidence as to grievous injury is not supported by Medical records.

20.The above ratio has been followed by this Court in ***Mahendiran and Another Vs. State Rep. By the Station House Officer [2019 SCC Online Mad 30722]***.

21.Further, the prosecution has neither collected wooden log nor



CRL.A.NO.823 OF 2016

the iron pipe nor the knife alleged used to assault the victims. However, the testimonies of P.W.1 to P.W.3 would establish that A1 to A3 attacked the victims with weapons like wooden log and iron pipe and caused injury in the assault. Hence, this Court is of the view that the prosecution has proved that accused assaulted P.W.1 and P.W.2 using dangerous weapons like wooden log and iron pipe and caused simple injuries to them and therefore, their act attracts the offence punishable under Section 324 of IPC. Further, there is no sufficient evidence available on record to show that accused unlawfully assembled and assaulted P.W.1 and P.W.2. Hence, this Court is of the considered view that prosecution has not proved the charges under Sections 147 and 148 of IPC against the accused.

22.Further, the prosecution has to prove the following ingredients to attract Section 3(1)(x) of SC / ST (POA) Act:

(i)There should be an intentional insult or intimidation of a SC/ST person by a person who is not a member of SC/ST community.

(ii)The accused should be aware of the fact that victim(s) belongs



CRL.A.NO.823 OF 2016

to SC/ST community.

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(iii)The intended act should be in any place even public view.

23.In this case, the accused and P.W.1 and P.W.2 belongs to the same village. Hence, the law presumes that the accused knew that P.W.1 and P.W.2 belonged to Scheduled Caste community and that P.W.1 and P.W.2 also knew that the accused belonged to Most Backward Community. Moreover, the prosecution examined P.W.7. He had issued Ex-P.4 certificate stating that P.W.1 and P.W.2 belonged to Hindu – Adidravidar which is a Scheduled Caste and accused belonged to Vanniyar community which is a non-scheduled caste. P.W.1 and P.W.2 are injured witness and deposed that the accused abused and assaulted by uttering their caste name.

24.As already stated *supra*, the prosecution has proved that the occurrence took place near Vijayarangan's Banana Grove. The prosecution examined P.W.3 and P.W.4 to prove the offences under Section 3(1)(x) of SC/ST (POA) Act. To be noted, P.W.3 and P.W.4 belonged to Scheduled Caste community. No independent witness were examined to prove the said offence. Further, in this case, the Superintendent of Police, Villupuram nominated



CRL.A.NO.823 OF 2016

Thiru G.Sekar, Deputy Superintendent of Police as Investigating Officer. He received the case file and started investigation on January 29th, 2013 and inspected the place of occurrence and prepared rough sketch and observation mahazar. Further, he arrested A3 and A4. Thereafter, he was transferred. The Investigating Officer -II who is the successor of Investigating Officer – I continued the investigation and filed charge sheet. It is pertinent to note here that the Superintendent of Police has not nominated the Investigating Officer – II as per Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

25.Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 which was in force on the date of occurrence reads as follows:

“7. Investigating Officer: - (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government /Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with



CRL.A.NO.823 OF 2016

right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.”

26. Time and again this Court held that Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 is mandatory in nature. This Court in its judgment in ***Manimegalai Vs. State represented by the Inspector of Police, Adhiyamankottai [2016 SCC Online Mad 9896]*** after referring *Sekar Vs. Deputy Superintendent of Police, Puduchatram [CDJ 2011 MHC 5916]* and *Periyasamy Vs. State [2015 (3) MLJ (CRL.) 573]* and *V.Ponnusamy Vs. State [2016 (1) MLJ (CRL.) 668]* has held as follows:

“57. In the present case, FIR was registered on 3.4.2008 by PW-4/S.I of Police. PW-5/D.S.P., Dharmapuri completed the



investigation only on 5.8.2008 and filed the Final Report before the committal Court. Thus, it is well beyond 30 days. Thus, the investigation officer/PW-5 has not followed Rule 7(2).

58.Long back in 1945 in King Emperor vs. Khawaja Nazir Ahmad {AIR 1945 PC 18}, the Privy Council held that in India the process of investigation is the province of police. However, when the investigation has been done in breach of any mandatory provisions of law or Rules prescribed thereunder or done mala fide the Court will interfere.

59.The said Rule is directed towards the Investigation Officer. It is a statutory direction, mandate to the Investigation Officer. He is bound to follow the rules.

60.In the light of the above, violation of said Rule 7(2) cannot be simply ignored. A prosecution based on violation of Rule 7(2) is vitiated.”

27.Further, in the above decision, it has been held as follows:

“39.The expression "public view" employed in Section 3(1)(x) of the SC/ST Act, came for consideration in a case before a Division Bench of the Delhi High Court. In the said case, the defacto complainant is a member of Scheduled Caste. He was staying in a flat along with his family. The accused were residing in the same flats. They were alleged to have called the defacto complainant and his wife by their caste. It was contended that the occurrence did not take place in public view as no public person was present. Justice V.S.Agarwal (as His Lordship then was) took



the view that for the purpose of 'public view' employed in Section 3(1) (x) of SC/ST Act, it is not necessary that a huge crowd must present, it is enough two or more members of the public were present, heard and viewed, as four persons residing in the same flats viewed the occurrence, the occurrence had taken place in public view.

40.However, Justice B.A.Khan (as His Lordship then was) took the view that the persons who were present and viewed must be independent persons, it will not include his friends, Associates, neighbours and thus the residents of the same flats will not be independent persons, so the occurrence had not taken place in 'public view'.

41.The said tangle was referred to a third Judge, namely, Hon'ble Justice S.K.Agarwal [Daya Bhatnagar vs. State of Delhi {(2004 (109) DLT 915)}].

41.Hon'ble Justice S.K.Agarwal endorsed the view of Hon'ble Justice B.A.Khan and observed as under:

"19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(i) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause(x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential



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CRL.A.NO.823 OF 2016

ingredient for the offence of Insult', 'intimidation' and 'humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within 'public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the



CRL.A.NO.823 OF 2016

requirement of 'public view' within the meaning of the expression used."

43.Thus from the language used in Section 3(1)(x) of the Act and the above survey of case-laws, it is very clear that for an offence under Section 3(1) 3(x) of SC&ST Act, at the time of occurrence, some independent members of the public should hear and view the utterances made by the accused towards a member of the Scheduled Caste/Scheduled Tribe Community. "

28.In this case, no independent witness was examined to prove the offence under Section 3(1)(x) of SC/ST (POA) Act. The prosecution has not attributed any explanation in this regard. Further, in this case, the alleged occurrence took place on January 28th, 2013 but the Investigating Officer filed charge sheet dated October 30th, 2013 on January 30th, 2014 i.e., there is a delay in filing the charge sheet.

29.It is to be noted that the Investigating Officer has not explained the delay in filing charge sheet exceeding the period prescribed under Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of



Atrocities) Rules, 1995.

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Conclusion

30. For the above stated reasons, this Court is of the view that the prosecution miserably failed to establish the offence under Section 3(1)(x) of the Act and therefore, this Court is of the view that the Trial Court has not considered the evidence and applied law in proper perspective. There is no evidence available on record to show that the accused out of sudden provocation, attacked P.W.1 and P.W.2. In the absence of such evidence, the Trial Court is not justifiable in concluding that the prosecution proved the offence under Section 335 of IPC against A1. Further, as alluded to *supra*, P.W.1 and P.W.2 did not satisfactorily depose about the involvement of A4 and A5 in the attack. Hence, there is no sufficient evidence available on record to attract Sections 147 and 148 of IPC. However, there is evidence available on record to attract the offence under Section 324 of IPC against A1, A2 and A3 alone. Hence, the Trial Court's judgment is liable to be interfered by this Court. Point Nos.(i) to (v) are answered accordingly.



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CRL.A.NO.823 OF 2016

31.Resultantly, this Criminal Appeal is partly allowed in the following manner:

(i) A1, A2 and A3 are found guilty under Section 324 of IPC. Hence, A1, A2 and A3 shall undergo **FOUR MONTHS OF SIMPLE IMPRISONMENT** with fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo **FIFTEEN DAYS OF SIMPLE IMPRISONMENT;**

(ii) All other charges including the charge under Section 3(1)(x) of SC/ST (POA) Act against A1 to A5 are not proved and accordingly, the appellants / accused are acquitted from other charges.

(iii) The period of imprisonment already



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CRL.A.NO.823 OF 2016

undergone by A1 to A3, shall be given set off under Section 428 of Cr.P.C.

(iv) The fine amount, if any already paid, shall be adjusted towards the fine amount now imposed for the offence under Section 324 of IPC.

(v) Thirty days time counting from today is granted to A1, A2 and A3 for surrendering before the Trial Court. If not surrendered within thirty days from today, the Trial Court is directed to take necessary steps to secure A1, A2 and A3 and commit them to the prison to undergo the remaining period of imprisonment.

28 / 02 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes

33/37



Speaking Order
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CRL.A.NO.823 OF 2016



CRL.A.NO.823 OF 2016

To

- 1.The Sessions Judge
Special Court for Exclusive Trial of Cases
Registered under the Scheduled Caste and Scheduled Tribe
(Prevention of Atrocities) Act, 1989
Villupuram.
- 2.The Deputy Superintendent of Police
Kandamangalam Police Station
Villupuram District.
- 3.The Public Prosecutor
High Court of Madras.



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CRL.A.NO.823 OF 2016



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CRL.A.NO.823 OF 2016

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.823 OF 2016

28 / 02 / 2024