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CRL.A.NO.830 OF 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2023

JUDGMENT PRONOUNCED ON: 23 / 02 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.830 OF 2016

1.K.Pugazh

2.T.Krishnamoorthy

3.K.Sriram

... Appellants

Versus

The State of Tamil Nadu

Rep. by The Deputy Superintendent of Police

Auroville Police Station

Villupuram District.

(Crime No.172/2015)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to call for the records in Spl.S.C.No.187/2015 on the file of Court of Sessions Judge, Special Court for Exclusive Trial of Cases registered under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989, Villupuram, peruse the same, hear the appeal, set aside the Judgment dated November 18th, 2016 and acquit the appellant.

For Appellants : Mr.R.Vivekananthan

For Respondent : Mr.A.Gokulakrishnan

Additional Public Prosecutor

J U D G M E N T



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This Criminal Appeal is preferred by the appellants herein assailing the 'judgment dated November 18th, 2016' in 'Special Sessions Case No.187 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:

<i>Appellant's Rank</i>	<i>Provision under which convicted</i>	<i>Sentence</i>
A1	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	335 of IPC	Simple Imprisonment for THREE YEARS with a fine of Rs.2,000/- (Rupees Two Thousand Only), in default thereof, to undergo Simple Imprisonment for NINE MONTHS.
A2	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
A3	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
		The period of imprisonment of A1 to A3 already undergone, if any, was given set off under Section 428 of Cr.P.C. The imprisonment shall run concurrently.

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



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to as the 'accused'.

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

3.1.On May 4th, 2013 at 01.30 p.m., Shanmugam (P.W.2) along with his friends namely Vilvamani (P.W.3), Anbarasu (P.W.4), Sakthivel (P.W.5) and Arumugam (P.W.12) went to a plot situated near Ramya water service. Keeping in mind the previous animosity, all three accused came there armed with wooden log, knife and iron pipe and abused the victim and his aforementioned four friends uttering their caste name. Then A1 inflicted cut injuries on the head of Shanmugam with the knife and threatened Shanmugam. Then, A2 and A3 attacked Shanmugam in the head with an iron pipe. Then, A1 to A3 abused the witness again by uttering their caste name. Then, Shanmugam who fell unconscious after the assault, was admitted to JIPMER Hospital, Pondicherry by one Ezhumalai. Then P.W.1's brother Moorthy lodged a complaint (Ex-P.1) before the Auroville Police Station, Pondicherry.

3.2.On receipt of the complaint, P.W.8 Selvanayagam registered FIR (Ex-P.4) under Sections 147, 148, 294(b), 324, 379, 307 of 'The Indian



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Penal Code, 1860' ('IPC' for short) read with Sections 3(1)(x) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST (POA) Act' for short) against the three accused and four others.

3.3.The Superintendent of Police, Villupuram District, vide his proceedings dated May 4th, 2013 nominated Mr.M.Murugesan, Deputy Superintendent of Police (P.W.13) as the Investigating Officer. The Investigation Officer inspected the place of occurrence on May 5th, 2013 at 07.00 hours in the presence of witnesses namely Subramani (P.W.6) and Ramesh (P.W.7) and prepared observation mahazar (Ex-P.9) and rough sketch (Ex-P.10). Thereafter, he obtained community details of the three accused (Ex-P.6) and P.W.1 to P.W.5, P.W.12 and one Suresh. On investigation, he found four other persons arrayed as accused in the case were not involved in the offence and hence, he sent a special report to the learned Judicial Magistrate and deleted their names and altered the Sections of law from 147, 148, 294(b), 324, 379 and 307 of IPC read with 3(1)(x) and 3(2)(v) of SC / ST (POA) Act to Sections 294(b), 324 and 307 of IPC read with 3(1)(x) and 3(2)(v) of SC / ST (POA) Act. The alteration report is marked as Ex-P.12.



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After completion of the investigation, he filed charge sheet under Sections 294(b), 324 and 307 of IPC read with Sections 3(2)(v) and Section 3(1)(x) of SC / ST (POA) Act against A1 and under Sections 294(b) and 324 of IPC read with Section 3(1)(x) of SC/ST (POA) Act against A2 and A3 on June 24th, 2013.

3.4.The learned Judicial Magistrate, Vanur registered the case in P.R.C.No.41 of 2013 and observing that the offence under Sections 3(1)(x) and 3(2)(v) are exclusively triable by the designated Special Court under SC/ST (POA) Act, 1989, committed the case to the Special Court [Principal District and Sessions Court] Villupuram, after furnishing copies under Section 207 of 'The Code of Criminal Procedure, 1973' [henceforth 'Cr.P.C.' for the sake of brevity] to the accused.

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



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<i>Rank of the accused</i>	<i>Charges framed</i>
A1	307 of IPC read with 3(2)(v) and 3(1)(x) of SC/ST (POA) Act, 1989
A2	324 of IPC read with 3(1)(x) of SC/ST (POA) Act, 1989
A3	324 of IPC read with 3(1)(x) of SC/ST (POA) Act, 1989

3.6.The charges were read over and explained to all the accused.

Since the accused pleaded not guilty, Trial was ordered.

3.7.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 District Judge, Villupuram transferred the case to the Trial Court.

3.8.To prove its case, the prosecution examined P.W.1 to P.W.13 (Witnesses) and marked Ex-P.1 to Ex-P.12 (Documents). The defence side neither examined any witnesses nor marked any documents. No Material Objects were marked by either side. The incriminating evidence against A1 to A3 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.



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3.9.The Trial Court after hearing either side, concluded that the charge against A1 under Section 307 of IPC has not been made out, however, the prosecution has proved the charges for the offence punishable under Section 335 of IPC; that the prosecution has proved the charges against A1 to A3 for the offences punishable under Sections 3(1)(x) of SC / ST (POA) Act; and that the prosecution has not proved the charge against A1 for the offence punishable under Section 3(2)(v) of SC / ST (POA) Act; and that the prosecution has not proved the charge against A2 and A3 for the offence punishable under Section 324 of IPC and convicted and sentenced A1 to A3 as stated *supra* in paragraph no.(1).

3.10.It is to be noted here that the Trial Court decided that A1 attacked P.W.2 due to sudden provocation and A1 had no intention to cause grievous hurt to P.W.2; that prosecution has not established the fact that A1 had intention or knowledge to cause death of P.W.2; and that the charge framed against A1 under Section 307 of IPC has not been made out. The Trial Court further decided that the act of A1 would attract the offence punishable under Section 335 of IPC. Accordingly, convicted and sentenced A1 under



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Section 335 of IPC. Further, Trial Court decided that A1 is not found guilty under Section 3(2)(v) of SC/ST (POA) Act. Further, the Trial Court decided that A2 and A3 are not found guilty for the charge punishable under Section 324 of IPC. Accordingly, acquitted A1 and A2 from the charge under Section 324 of IPC.

3.11. Feeling aggrieved with the Conviction recorded and the Sentence imposed by the Trial Court, A1 to A3 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 Shanmugam (P.W.2) and his four friends with an intention to humiliate them in public view; that there is no evidence available on record to say that the accused insulted or abused Shanmugam (P.W.2) and his four friends uttering their caste name in any place within the public view; that the prosecution has falsely registered a case against the accused; that the



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prosecution has not proved the genesis of the crime and the genesis alleged is suspicious; that the evidence of P.W.1 to P.W.3 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.

5.Per contra, learned Additional Public Prosecutor has submitted that P.W.2 is an injured witness; that his evidence has been corroborated by medical evidence; that the defence side did not cross examine P.W.3 and P.W.4; that the un-controverted testimony of P.W.3 and P.W.4 and the evidence of P.W.2 clearly proved the offence alleged; that the Trial Court after considering the facts and circumstances of the case, came to the conclusion that the A1 to A3 committed the offence under Section 3(1)(x) of SC / ST Act and A1 also committed the offence under Section 335 of IPC; and that there is no warrant to interfere with the Trial Court's judgment. Accordingly, he prayed to dismiss the appeal and sustain the conviction and sentence.

6.This Court has heard either side and perused the case file. The following points arise for consideration.

(i) Whether the charge under Section 335 of IPC



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against A1 is proved beyond reasonable doubt?

(ii) Whether the prosecution has proved the charge under Section 3(1)(x) of SC/ST (POA) Act against A1 to A3?

Discussion and Decision for Point No.(i)

7. According to the prosecution case, on May 4th, 2013 at 01.30 p.m., Shanmugam (P.W.2), Vilvamani (P.W.3), Anbarasu (P.W.4), Sakthivel (P.W.5) and Arumugam (P.W.12) went to see a plot situated near Ramya water service; that at the time, the accused persons came there armed with wooden log, knife and iron pipe and attacked P.W.2 and others by uttering their caste name. In the said attack, P.W.2 sustained injuries and was admitted to JIPMER Hospital, Pondicherry. Upon learning about the occurrence, P.W.2's brother Moorthy (P.W.1) went to Auroville Police Station and filed a written complaint (Ex-P.1).

8. P.W.1 who is the brother of P.W.2 deposed that on May 4th, 2013 at 01.30 p.m., while his brother Shanmugam was approaching Kannodai Bridge, the accused persons way-laid his brother and attacked him with knife, iron pipe and wooden log; and that, in the said attack P.W.1's brother



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Shanmugam sustained injuries on his head and his front tooth was also broken.

8.1.In his cross examination, P.W.1 deposed that the accused persons and others attacked his brother Shanmugam alone; that they did not attack him; that his brother sustained injuries in his head and limb and his tooth was also damaged and that he went to Auroville Police Station at 08.30 p.m., and lodged the written complaint (Ex-P.1).

9.It is to be noted that though P.W.1 stated that he brought his brother Shanmugam to JIPMER Hospital, Pondicherry, the medical records and the evidence of Doctors discussed *infra* would show that one Ezhumalai brought Shanmugam (P.W.2) to hospital. If really P.W.1 witnessed the occurrence and was present in the alleged place of occurrence, naturally P.W.1 would have tried to prevent the offence, which would be the natural conduct of a person. Further, if he was really present in the place of occurrence, he would have brought the injured (P.W.2) to hospital. Moreover, in Ex-P.1, P.W.1 did not state that he witnessed the occurrence. Ex-P.1



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complaint reads as follows:

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“...1-வது எதிரி அவன் கையில் இருந்த வீச்சு அரிவாளால் இத்தோடு செத்து போடா என்று தலையில் வெட்டியுள்ளான். 2, 3வது எதிரிகள் அவர்கள் கையில் இருந்த இரும்பு பைப்பால் மாறி மாறி தலை முதுகு போன்ற இடத்தில் சரமாரியாக கொலைவெறி தாக்குதல் செய்துள்ளார்கள்... மேற்படி கொலை தாக்குதலுடன் இருக்கும் என் தம்பி தற்போது புதுவை ஜிப்மர் மருத்துவமனையில் சிகிச்சை பெற்று வருவதால் சம்பவத்தின்போது என் தம்பியுடன் இருந்த நபர்கள் மூலம் நான் இந்த புகாரை அளிக்கிறேன்.”

A bare reading of Ex-P.1 complaint would show that P.W.1 was not present in the alleged place of occurrence and he did not witness the alleged offence. In view of the discussions *infra*, this Court is of the view that the presence of P.W.1 in the place of occurrence is doubtful and therefore, the evidence of P.W.1 is not reliable and trustworthy.

9.1.P.W.2 is the injured witness who is none other than the brother of P.W.1. He deposed that on May 4th, 2013 at 01.30 p.m., when he and Vilvamani (P.W.3), Giri @ Sakthivel (P.W.5), Arumugam (P.W.12), Anbarasu (P.W.4) and Moorthy (P.W.1) were approaching near Kannodai

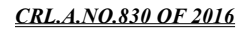
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Bridge, the accused came there; that A1 attacked him with knife on his head; that A3 attacked him in his head with iron pipe; that consequently he went unconscious and that there was previous enmity between him and the accused persons pertaining to purchase of a lorry.

9.2. In his cross examination, P.W.2 deposed that at the time of occurrence, Vilvamani (P.W.3), Giri @ Sakthivel (P.W.5), Arumugam (P.W.12), Anbarasu (P.W.4) and Moorthy (P.W.1) were there, however, none of the witness made an attempt to intervene and stop the accused. He further deposed that he sustained injuries on his head, right fore-arm, right leg and two of his teeth were also broken; that 25 stitches made on his head; and that while he was in the hospital, police came there and recorded his statement. He further deposed that there was previous enmity between the accused persons and one Raja pertaining to purchase of a Lorry; that Raja had called him for compromise; and that there were also monetary issues between Raja and accused. In a nutshell, P.W.2 has deposed that the accused persons attacked him and caused injuries; that none of the people with him intervened to prevent the accused; and that there exist previous enmity between the



10. The Doctor (P.W.9) who gave treatment to P.W.2 has deposed that P.W.2 was admitted in the hospital by his brother Ezhumalai. At the admission, P.W.2 was semi-conscious and disoriented; that his right hand had a fracture of grievous nature; and that P.W.2 had simple injuries on his head. Accordingly, he issued Ex-P.5 medical certificate.

11.P.W.3 deposed that on May 4th, 2013 at 01.30 p.m., when Shanmugam, Moorthy, Anbarasu and Giri @ Sakthivel were approaching Kannodai Bridge, A1 came there and attacked Shanmugam (PW.2) with wooden log on his head.



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12.P.W.4 deposed that the accused along with some more persons came there and attacked P.W.2.

13.P.W.5 deposed that the accused attacked P.W.2 with iron pipe on his head. P.W.5 in his cross examination, admitted that he did not witness the occurrence directly and he did not know how the occurrence happened.

14.This Court observes that there are material contradictions between the medical evidence and the oral evidence adduced by the parties in this case. As alluded to *supra*, P.W.1 could not have witnessed the incident; he has deposed the occurrence in an exaggerated manner; and his evidence is unbelievable and untrustworthy and does not inspire the confidence of this Court. P.W.2 is an injured person; in his evidence he deposed that the accused persons attacked him with knife and iron pipe; but the medical evidence would establish that P.W.2 had a simple injury on his head. Further, he did not depose anything about the accused persons attacking him with iron pipe and causing fracture in his right hand. Further, no medical records were annexed to substantiate that his right fore-arm bone got fractured in the



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alleged incident and the prosecution has failed to prove the same aspect; and there is no reason or explanation offered by the prosecution in this regard.

Further, P.W.2 has deposed that at about 07.30 p.m., on May 4th, 2013, while he was in hospital, police came there and recorded his statement. The said statement could be the first information. The said statement has been suppressed by the prosecution. As far as the evidence of P.W.1 and P.W.4 is concerned, if they were really there at the scene of occurrence, they would have intervened and attempted to prevent the accused persons. The evidence of P.W.1 to P.W.4 are contradictory in nature raising serious doubts in the prosecution's case.

15.The alleged occurrence happened at 01.30 p.m., on May 4th, 2013 and FIR was registered on May 4th, 2013 at 08.30 p.m. Further, the FIR reached the Court only on May 6th, 2013 at 03.00 p.m. The prosecution did not explain the delay in registering the FIR as well as sending the FIR to the Judicial Magistrate Court. Further, there are many variations and contradictions in the oral evidence. There are material contradictions between the medical evidence and oral evidence too. Further, the prosecution miserably failed to establish that P.W.2 got grievous injury in the incident. In



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these circumstances, this Court is of the view that the offence under Section 335 of IPC would not be attracted in this case.

16.To attract Section 335 of IPC, the prosecution has to prove that the occurrence happened due to sudden provocation. In this case, there is no evidence with regard to the sudden provocation. Hence, the Trial Court's conclusion that A1 committed the offence under Section 335 of IPC is to be interfered with. Point No.(i) is answered accordingly in favour of A1 and against the prosecution.

Discussion and Decision for Point No.(ii)

17.To attract Section 3(1)(x) of SC/ST (POA) Act, the prosecution has to prove that the accused persons insulted and intimidated the witness with an intention to humiliate by uttering their caste name in any place within 'public view'. In this case, P.W.1 to P.W.4 have not stated in their evidence that the accused persons uttered their caste name. To attract Section 3(1)(x) of SC/ST (POA) Act, the prosecution should establish that the accused persons insulted or intimidated or abused them with an intention to



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humiliate a member of Scheduled Caste or Scheduled Tribe in any place within public view.

18.The term 'public view' has been interpreted by this Court in ***VICTOR PAUL VS. STATE [2002 MLJ (CRL) 202]*** wherein it is observed as under:

“4.The word “public view” is not defined in the Act. The dictionary meaning of the word “public” is “Open to the people as a whole”. The dictionary meaning of the word “view” is vision or sight as from a particular position. Reading these two meanings together in the context of the words “public view”, it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place within “public view” or in any other place within “public view”. In either situation the essential element that requires to be established is that it was in “public view”. The word “public view” in the Section is preceded by the words “in any place within”. Therefore, it is clear to my mind that insult or intimidation should be in a place within public view.”

19.In this case, there is no evidence available on record to say



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that the accused persons intentionally insulted or abused the witnesses in public view. In short, there is no evidence to attract the offence punishable under Section 3(1)(x) of SC/ST (POA) Act. The Trial Court, without any evidence is not justifiable in coming to the conclusion that the act of the accused made out an offence under Section 3(1)(x) of SC/ST (POA) Act. Hence, the said finding is also to be interfered by this Court. Point No.(ii) is answered accordingly in favour of the accused and against the prosecution.

Conclusion

20. In the light of the dispositive reasoning alluded to *supra*, this Court interferes with the findings of the Trial Court with respect to the conviction of A1 under Section 335 of IPC and conviction of A1 to A3 under Section 3(1)(x) of SC/ST (POA) Act and sets them aside.

21. Resultantly, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants / accused on November 18th, 2016, in Special Sessions Case No.187 of 2015, 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,



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Villupuram is hereby set aside and the appellants / accused are acquitted from all the charges levelled against them. Bail bonds, if any, shall stand terminated. Fine amount, if any paid by the appellants, shall be refunded to them.

23 / 02 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
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To

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- 1.The Sessions Judge
Special Court for Exclusive Trial of Cases
Registered under the SC / ST (POA) Act, 1989,
Villupuram.
- 2.The Deputy Superintendent of Police
Auroville Police Station
Villupuram District.
- 3.The Public Prosecutor
High Court of Madras.



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R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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