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CrI.A.No.266 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CrI.A.No.266 of 2017

1.S.Ravikumar

2.R.Kalaiselvi

... Appellants

Vs.

State by
The Deputy Superintendent of Police,
Kariyalur Police Station,
Kallakurichi Sub-Division,
Villupuram District
(Crime No.42 of 2015)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973 to set aside the Conviction and Sentence dated 05.04.2017 in Spl.S.C.No.5 of 2016 passed by the Sessions Judge, Special Court for Exclusive trial cases Registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram.

For Appellants : Mr.C.Prabakaran

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

For Victim : M/s.S.Varshini
Legal Aid Counsel

**JUDGMENT**

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1. The appellants S.Ravikumar (A1) and R.Kalaiselvi (A2) stood charged for the offences punishable under Section 323 of the Indian Penal Code, 1860 and Section 3(1) (x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 and were convicted and sentenced for the aforesaid offences as detailed hereunder.

<i>Rank of the accused</i>	<i>Conviction</i>	<i>Sentence</i>
A1	323 IPC	Simple Imprisonment for One Year and a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for three months each.
	3(1) (x) of the SC/ST (POA) Act, 1989	Simple Imprisonment for One Year and a fine of Rs.3,000/- in default, to undergo Simple Imprisonment for three months each.
A2	323 IPC	Simple Imprisonment for One Year and a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for three months each.
	3(1) (x) of the SC/ST (POA) Act, 1989	Simple Imprisonment for One Year and a fine of Rs.3,000/- in default, to undergo Simple Imprisonment for three months each.



2. The case of the prosecution as per the oral and documentary evidence is as follows:

2.1 The appellants belong to Naatugounder Community, while the defacto complainant Thiru Anbu @ Anbazhagan (P.W.1) belongs to Hindu Arunthadhiyar a Scheduled Caste Community. Thiru Panneerselvam (P.W.9), the Special Thasildar, Chinnasalem had issued Reports (Ex.P4 and Ex.P5) in this regard. P.W.1 had entered into an agreement with the first appellant to take the latter's land on lease and paid a sum of Rs.3 lakhs to him. The first appellant promised him that he would be handing over his land after harvesting the crops. However, the first appellant did not keep up his promise and on 11.09.2015, P.W.1 accompanied by Kamalasekaran (P.W.2) Paramasivam (not examined) and Raja (P.W.5) went to the house of the first appellant at about 9.00 a.m., and demanded A1 to repay the sum of Rs.3 lakhs to him. Infuriated over this, A1 and his wife A2, abused him in filthy language mentioning his caste name and also pushed him down and assaulted him.



2.2. P.W.1 went to Government Hospital, Kallakurichi for taking treatment. Dr.Anbu (P.W.3) examined P.W.1 on 11.05.2015 at about 12.45 hours. P.W.1 had reported to him that he was attacked by a person near his house and complained of chest pain. There were no external and internal injuries on P.W.1 but P.W.3 admitted him as an in-patient in the hospital. A Copy of the Accident Register was marked as Ex.P2. Subsequently, P.W.1 left the hospital, without any intimation and therefore, no wound certificate was issued by the Doctor.

2.3 Thiru Parameshwaran (P.W.10), the then Special Sub Inspector of Police, Kariyalur Police Station, on receipt of intimation from the Government Hospital, Kallakurichi, went over there on 12.05.2015 and recorded the complaint statement of P.W.1 and registered FIR (Ex.P9) in Crime No.42 of 2015 against the present appellants for the offences punishable under Sections 294(b), 323, 506(i) IPC and Section 3(1) (r) (s) (Prevention of Atrocities) Act, Scheduled Castes/Scheduled Tribes Amendment Ordinance Act, 2014 (in short SC/ST Act).



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2.4 The Superintendent of Police, Villupuram District vide his proceedings dated 12.05.2015 in SJ & HR/VPM Unit DSR No.41/2015 nominated Thiru T.Veemaraj (P.W.12), the then Deputy Superintendent of Police, DCB to investigate Kariyalur Police Station in Crime No.42/2015 under Sections 294(b), 323, 506(i) IPC r/w 3(1) (r) (s), SC/ST Act.

2.5 Accordingly, Thiru T.Veemaraj (P.W.12) took up investigation in Crime No.42/2015 on 12.05.2015, went to the place of occurrence and prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P12) in the presence of the witnesses Arumugam (P.W.8) and Chinnaiyan (P.W.11). He examined the witnesses and recorded their statements individually under Section 161(3) Cr.P.C.

2.6 In the meanwhile, both the appellants surrendered before the concerned court and were enlarged on bail.



2.7 After completing investigation, P.W.12 laid a final report before the Special Court for Exclusive Trial of Cases registered under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram in Spl.S.C.No.5 of 2016 against the appellants for the offences punishable under Section 323 IPC and Section 3(1) (x) of the SC/ST Act.

2.8 The learned Sessions Judge framed charges for the aforesaid offences against the appellants and both the appellants pleaded not guilty.

2.9 In order to bring home the guilt of the accused, the prosecution examined 12 witnesses and marked 13 documents.

2.10 The appellants, when questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. However, they did not examine any witness on their side.



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2.11 The learned Sessions Judge, after analyzing the oral and documentary evidence on record, convicted both the accused for the offences punishable under Section 323 of the Indian Penal Code, 1860 and Section 3(1) (x) of the SC/ST Act and sentenced them as detailed in Paragraph No. 1.

2.12 Aggrieved over the same, the present Criminal Appeal has been filed by the appellant.

3. Heard Mr.C.Prabakaran, learned counsel for the appellants, Mr.S.Rajakumar, learned Additional Public Prosecutor, for the State and Ms.S.Varshini, Legal Aid Counsel for the victim.

4. Mr.C.Prabakaran, learned counsel appearing for the appellants contended that the prosecution has miserably failed to prove the case against the appellants and stressed the following points:



(a) payment of a sum of Rs.3 lakhs by P.W.1 to the first appellant has not been proved by the prosecution;

(b) P.W.1 was admitted in the hospital by one Vijayan and the said Vijayan has not been examined in the Court;

(c) In the Accident Register, no external or internal injuries were found and in fact, P.W.1 had left the hospital without any intimation;

(d) It is in evidence that the defacto complainant (P.W.1) had abused the second appellant (A2) in filthy language and also asked the first appellant to send his wife (A2) with him. On hearing this, the second appellant attempted to commit suicide and was admitted in the Intensive Care Unit of Government Hospital, Kallakurichi on 11.05.2015;

(e) the second appellant had also given a police complaint against P.W.1 and others for the offences punishable under Sections 147, 148, 447, 324, 342, 427 and 506(ii) IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and the same was registered as FIR in Crime No. 41/2015;



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WEB COPY (f) A Final Report was also filed before the learned Judicial Magistrate, Poonamallee and in order to circumvent the criminal action against P.W.1 and others, the present complaint was given subsequently by P.W.1;

(g) There are also glaring contradictions in the evidence of P.W.1, P.W.2, P.W.4 and P.W.6.

5. Per Contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor contended that the learned Sessions Judge, after analyzing the oral and documentary evidence on record, had concluded that the accused are guilty for the offences punishable under Sections 323 of the Indian Penal Code, 1860 and Section 3(1) (x) of the SC/ST Act and therefore, there is no reason for this Court to interfere with the well reasoned orders of the learned Sessions Judge.

6. The learned Legal Aid Counsel for the defacto complainant, Ms.S.Varshini contended that all the witnesses to the prosecution had



cogently narrated the sequence of events and the Investigation Officer also had done a proper investigation. According to her, the learned Sessions Judge had analysed the evidence on record, thread bare, and therefore, the present appeal is liable to be dismissed.

7. It is true, that there are contradictions in the evidence of prosecution as highlighted hereunder.

- P.W.1 in his complaint statement dated 12.05.2015 had averred that he went to the house of the appellants on 11.05.2015 at about 9.00 a.m., along with Paramasivam (Not examined), Raja (P.W.5) and Kamalasekaran (P.W.2) and demanded the first appellant to repay him a sum of Rs.3 lakhs and that both the appellants (A1 and A2) assaulted him with their hands and also abused him in filthy language. In his evidence, P.W.1 has stated that he was accompanied by Kamalaselaran, Eswaran and Raja.
- It is in evidence that the appellants had obtained loan from one Vijayan, who is running a Finance Company in Kachirapalayam Village, after handing over their property documents as security.



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Subsequently, the said Vijayan wanted to sell the property of the appellants, which is worth about Rs.60 lakhs for a paltry sum of Rs.12 lakhs in favour of one Thyagarajan and since this proposal was not accepted by the appellants, P.W.1 along with others went to the house of the appellants and picked up a quarrel with them and also asked the first appellant to send his wife (the second appellant) with them. On account of this, the second appellant attempted to commit suicide and was admitted to the Government Hospital, Kallakurichi.

- She also lodged a complaint before the Kariyalur Police Station which was registered as FIR in Crime No.41 of 2015 against P.W.1 and others.
- A copy of the Accident Register (Ex.P2) shows that P.W.1 was admitted in the hospital by Vijayan which suggests the close association between the two.
- The date of complaint preferred by the second appellant was 11.05.2015 which is earlier in point of time. The present complaint i.e., the complaint given by P.W.1, was on 12.05.2015 and the FIR in Crime No.42 of 2015 was registered on 12.05.2015.



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- When P.W.1 was allegedly admitted in the Government Hospital on 11.05.2015 itself, it is not clear as to why the complaint statement was not recorded by the police, on the same day.
- P.W.1 did not have any injuries on his body and it is perplexing to note as to why, he was admitted as an in-patient in the hospital by Dr.Anbu (P.W.3).
- The prosecution had not adduced any evidence to show that it was only P.W.1, who lent a sum of Rs.3 lakhs to the first appellant.
- Thiru Raja (P.W.5) admitted in his evidence that, he is one of the partners in the Finance Company run by Vijayan.
- In the complaint (Ex.P1), the presence of Thiru Eswaran (P.W.4) in the place of occurrence was not mentioned by P.W.1
- Thiru Kamalasekaran (P.W.2) during the course of cross examination had stated that the second appellant was not present in her house when he went to the house of A1 along with P.W.1.
- P.W.1 had not explained, as to why he left the hospital without any intimation. This shows that, he was waiting for the Police to come and record his complaint statement in the hospital and thereafter left the



place.

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- The Investigation Officer, has not looked into the FIR in Crime No.41/2015 registered on 11.05.2015 before filing the final report in the instant case.

8. Thus the case of the prosecution rests on a very weak premise and therefore, I do not see any reason to convict the appellants for the offences punishable under Section 323 of the Indian Penal Code, 1860 and Section 3(1) (x) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. In the result,

(i) The Criminal Appeal is allowed.

(ii) The Conviction and Sentence passed in Spl.S.C.No.5 of 2016 dated 05.04.2017 by the Special Judge/Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram, is hereby set aside.



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(iii) This Court places on record its appreciation to Ms.S.Varshini, learned Legal Aid Counsel appearing for the Victim, for her valuable assistance in deciding this case. The High Court Legal Service Committee shall pay her fees in accordance with rules.

(iv) The appellants (accused in Spl.S.C.No.5 of 2016) are acquitted from all the offences, of which they are charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded to them.

18.07.2024

Index : yes/no
Internet: Yes/No
Neutral Citation Case: Yes/No
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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. The Special Judge,
Special Court under the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989,
Chennai.
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
Criminal Section,
High Court,
Madras.



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R.HEMALATHA, J.

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