



Crl. Appeal No.610 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2023

Delivered on : 09.08.2024

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.A.No.610 of 2017

Sugumar @ Krishnaparamathma

...Appellant/Single Accused

-Vs-

State Rep. By
Deputy Superintendent of Police,
Pollachi Division,
All Women Police Station,
Pollachi.
(Crime No.15 of 2012)

...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, 1973, to set aside the Judgment and Order of conviction passed in Special S.C.No.12 of 2013 by order dated 06.09.2017 on the file of the learned Principal District & Sessions Judge, Coimbatore.



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For Appellant : Mr.C.Venkatesan
Legal Aid Counsel
For Respondent : Mrs.G.V.Kasthuri
Additional Public Prosecutor
For Victim : Mrs.S.Sridevi
Legal Aid Counsel

JUDGMENT

This Criminal Appeal is filed to set aside the Judgment and Order of conviction passed in Special S.C.No.12 of 2013 by order dated 06.09.2017 on the file of the learned Principal District & Sessions Judge, Coimbatore.

2. Brief facts as per the Prosecution case are as follows:

2.1 P.W-1 in this case, was already married and was living with her husband. Her husband died in the year 2002, leaving her and two children, aged 11 years old daughter and 10 years old son. After the death of her husband, Veerakumar, P.W-1 widow along with her two minor children, shifted her residence from Valparai in Coimbatore to Kottur in Pollachi to her mother's place. She was staying along with her mother and younger sister. To earn her livelihood, she was working in a cardboard



manufacturing small-scale unit. She was travelling from her place of residence to her place of work in S.T.C bus. She was working from 2005 onwards. In the course of such travel, she became acquainted with the driver of S.T.C bus. After acquainting with P.W-1, the driver of the S.T.C bus made advancement on the ground that he wanted to marry a woman who belonged to the Scheduled Castes and Scheduled Tribes Community to lend a help with a social progressive thought. Believing the words of the driver of S.T.C bus, P.W-1 stated that she had two children. Still, he made promise to marry her. Accordingly, he took her to a temple in Palani and performed marriage under Hindu marriage procedures. After the marriage, they came back to Kottur to live as husband and wife. The children of P.W-1 were introduced to the driver of the S.T.C bus as a father by P.W-1. Accordingly, they were living as husband and wife. After 7 years, the husband of P.W-1 failed to come home. She went in search of him. Since she knew him as a driver of S.T.C bus, she went to the bus stand where he used to drive the bus. In the bus stand, when she confronted him, he revolted, objecting to the query of P.W-1 why he had not come home for long? He replied that he was



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already married and had a grown-up son and he could not come to her as she belonged to the Scheduled Caste Community, and thereby scolding her with abusive words, including caste slurs, in a public place. She was annoyed. It caused mental agony and depression, which resulted in her giving a complaint to the All Women Police Station, Pollachi. The said occurrence took place on 02.08.2012. She gave a complaint on the next day, 03.08.2012, before the All Women Police Station, Pollachi. Based on her complaint under Ex.P-1, the Inspector of Police, All Women Police Station, Pollachi, registered as CSR and conducted mediation. Since parties were not amenable, FIR was registered in Crime No.15 of 2012 on 05.08.2012. The copy of the original FIR and oral complaint under Ex.P-1 were sent to the Court of the learned Judicial No.I, Pollachi, and copies of the same were sent to the higher officials, including the Deputy Superintendent of Police, Pollachi. Since the charges attracted the provisions of Scheduled Castes and Scheduled Tribes, the case was registered for the offence under Sections 498(A), 417, 494, 495 and 506(i) of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.



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3. When the case came up for hearing on earlier occasion, the learned Counsel nominated by the Legal Aid Committee on the orders of this Court was ready to argue. At that time, based on the earlier query raised by the learned Judge of this Court, who presided over this Roster, the Prosecution was directed to produce the Complainant/Victim since the case involves the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. By which all the Appeals as well as any Court proceedings shall be heard after hearing the Victim concerned. Therefore, this Court had directed the Victim to be produced by the Inspector of Police, Pollachi. When the Victim was produced before this Court, both the Inspector of Police, Pollachi, as well as Victim, expressed their difficulties. At the same time, this Court had directed the Legal Aid Committee to nominate a Counsel / panel lawyer from the Legal Aid Committee attached to this Court to appear on behalf of the Victim to raise objections regarding the submission of the Appellant. Accordingly, the case was adjourned to 13.12.2023 from 06.12.2023.



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4. Today, 13.12.2023, when the case came up for hearing, Ms.S.Sridevi, Enrollment No.924/1998, Mobile Number: 9500139531, panel lawyer nominated by the Legal Aid Committee to appear on behalf of the Victim, is present in Court.

5. On the previous hearing, since the Inspector of Police, Pollachi, as well as the Victim expressed their difficulties in appearing from the faraway place, Pollachi, the Inspector of Police, Pollachi, was directed to get the mobile number of the Victim so that the Counsel nominated by the Legal Aid Committee could get instructions from the Victim. The learned Additional Public Prosecutor is requested to get the mobile number from the Inspector of Police, Pollachi, concerned to the Legal Aid Counsel, Ms.S.Sridevi, so that she can effectively raise objections on instructions from the Victim. Otherwise, it will amount to an empty formality in defeating the parliamentary intent of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.



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6. Learned Counsel nominated by the Legal Aid Committee who appears on behalf of the Victim is requested to observe the arguments of the learned Counsel nominated by the Legal Aid Committee on behalf of the Appellant to observe the submissions so that she can get down the same and raise objection after getting instructions to grant such time to submit her arguments. For the present, the learned Counsel for the Appellant shall proceed with arguments.

7. On the orders of this Court, Mr.C.Venkatesan, Enrolment No.493/05, Mobile No.9941159656, learned Counsel nominated by the Legal Aid Committee, submitted his arguments on behalf of the Appellant.

8. Learned Counsel for the Appellant invited the attention of this Court to the charges framed against the Accused.



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9. On receipt of the copy of FIR, the Deputy Superintendent of Police, Pollachi, had proceeded with the investigation. He examined P.W-1, Victim, her children, and her mother, and her sister. P.W-6 is the house owner, who stated them as husband and wife, and the neighbours as the Mahazar Witness regarding the preparation of rough sketch under Ex.P-6 and Observation Mahazar under Ex.P-2. Since the case involved the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Community Certificate was obtained from the Revenue Divisional Officer. Based on the enquiry conducted by the Tahsildar, it was found that the Victim belonged to a member of the Scheduled Caste Community and the driver of S.T.C bus. The Accused in this case belonged to 24 Manai Telugu Chettiar, not a Scheduled Caste, Other Backward Class.

10. After completion of the investigation, the Deputy Superintendent of Police, Pollachi, laid a final report before the Court of the learned Judicial Magistrate No.I, Pollachi, which was committed to the learned Principal District and Sessions Judge, Coimbatore.



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11. On appearance of the Accused, copies were furnished under Section 207 of Cr.P.C and the case was committed to the learned Principal District and Sessions Judge, Coimbatore, who also happened to be the Special Judge for trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

12. On appearance of the Accused before the learned Principal District and Sessions Judge, Coimbatore, and after hearing the arguments of the learned Public Prosecutor and the learned Counsel for the Defence, the learned Principal District and Sessions Judge, Coimbatore, had framed charges under Sections 417, 494, 495, 506(i) of IPC and Section (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Since the Accused denied charges, the learned Principal District and Sessions Judge, Coimbatore, ordered trial.

13. During trial, the Prosecution had examined Prosecution Witnesses,



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P.W-1 to P.W-10. P.W-1 is the Victim/De facto Complainant. P.W-2 is her daughter. P.W-3 is her mother. P.W-4 is the neighbour, who turned hostile. P.W-5 is the Mahazar Witness for the observation Mahazar and rough sketch. P.W-6 is the landlord, happened to be witness regarding the marriage. P.W-7 is the younger sister of P.W-1. P.W-8 is the Deputy Collector, who had issued Community Certificate when she was working as Tahsildar. P.W-9 is the Inspector of Police, Pollachi, who had received complaint under Ex.P-1 and registered FIR under Ex.P-5. P.W-10 is the Deputy Superintendent of Police, Pollachi, who had proceeded with the investigation and laid the final report before the Court concerned.

14. It is the case of the learned Counsel for the Appellant that the witness had deposed before the Trial Court but the charges framed by Court, are not proved. Also, the learned Counsel for the Appellant invited the attention of this Court to the discussion of evidence by the learned Principal District and Sessions Judge, Coimbatore. The learned Principal District and Sessions Judge, Coimbatore, had acquitted the Accused from the charges

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under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and Sections 494, 495 and 506(i) of IPC, on the ground that there is no special proceeding by the Superintendent of Police of the District concerned nominating a Special Officer not below the rank of Deputy Superintendent of Police, who is the Investigation Officer in this case. The Deputy Superintendent of Police, Pollachi, himself, had taken up the investigation. Therefore, on technicalities of law, based on the reported ruling, the learned Principal District and Sessions Judge, Coimbatore, had acquitted the Accused from all the charges framed by the Court, including Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. At the same time, on the basis of the materials available before the Court, even though there was no charge under Section 417 of IPC, the learned Principal District and Sessions Judge, Coimbatore, convicted the Accused for offence under Section 417 of IPC and sentenced him to simple imprisonment of six months and fine of Rs.25,000/-. Out of which Rs.20,000/- to be paid to P.W-1, Victim. Aggrieved by the same, the Accused, the driver of S.T.C bus, who claimed to marry P.W-1, is the Appellant before this Court.



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Therefore, he seeks to set aside the judgment of conviction and sentence imposed on the Appellant by the Trial Court on the ground that the Court had not framed any charge under Section 417 of IPC and that he was proceeded by the Court and convicted him without proper charge. Therefore, he seeks to set aside the judgment of conviction recorded by the learned Principal District and Sessions Judge, Coimbatore, in S.C.No.12 of 2013 by judgment dated 06.09.2017.

15. Learned Additional Public Prosecutor by way of reply, vehemently opposed the same, stating that there are several materials from the deposition of the witnesses before the learned Principal District and Sessions Judge, Coimbatore, through P.W-1, her daughter, her mother, her neighbour, her landlord and the person who had attended the marriage as a witness, who was also a resident of the neighbourhood where they are residing and also acquainted with the family of the Victim as P.W-6. Therefore, the learned Principal District and Sessions Judge, Coimbatore, on proper appreciation of evidence had acquitted the Accused from the charges



framed by the Court since the charge under Section 417 of IPC framed by the Court is not prejudiced. The Accused, as he was aware of the allegation made against him by the Victim as P.W-1, on the basis of the complaint under Ex.P-1 which contained all the ingredients of the offences, including Section 417 of IPC. Also, FIR contained the charge under Section 417 of IPC. By inadvertence, the Court had not framed charge under Section 417 of IPC. For a lesser punishment the charge need not be framed. Therefore, the learned Additional Public Prosecutor submitted that the judgment of conviction recorded by the learned Principal District and Sessions Judge, Coimbatore, and six months of simple imprisonment imposed on him is a lesser sentence. Therefore, the Appeal lacks merit and is to be dismissed.

Point for Consideration

Whether the judgment of the learned Sessions Judge regarding the conviction recorded under Section 417 of IPC in Spl. S.C.No.12 of 2013 dated 06.09.2017 is to be set aside as perverse?



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16. Heard the learned Counsel for the Appellant, Counsel nominated by the Legal Aid Committee Mr.C.Venkatesan and the learned Additional Public Prosecutor and the learned Counsel for the victim Mrs.S.Sridevi, nominated by the Legal Aid Committee.

17. Perused the evidence of Prosecution Witnesses P.W-1 to P.W-10 and the documents marked during trial before the learned Principal Sessions Judge under Ex.P-1 to Ex.P-6. The finding of the learned Principal Sessions Judge, Coimbatore acquitting the Accused from the Charges under Section 3 (I) (x) of SC/ST (PoA) Act is found reasonable in the light of the decision cited by the learned Counsel for the Accused before the trial Court in ***Periyasamy and one another Vs. State rep. By Deputy Superintendent of Police, Avinashi Sub-Division, Kovilpalayam Police Station, Coimbatore District (2015 (2) MWN (Cr.) 628)*** wherein it is stated that without special proceedings of the Superintendent of Police monitoring an Officer not below the rank of Deputy Superintendent of Police and also without completing the investigation within the mandate period of 90 days. Also, the decision cited



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by the learned Counsel for the Accused before the trial Court in ***V.Ponnusamy Vs. State Rep. By Deputy Superintendent of Police, Palladam Range, Kamanaickenpalayam Police Station, Coimbatore (2016 (1) TNLR 469 (MAD.))*** Based on these two rulings, the evidence of the Prosecution was rejected by the learned Principal Sessions Judge, Coimbatore. From the available evidence through P.W-1-victim, P.W-2-daughter of the victim, P.W-3-mother of the victim, P.W-7-sister of the victim, P.W-8- Tahsildar who had issued community certificate regarding the community of the Accused and the victim. P.W-6-landlord of the house where the P.W-1 along with the Accused resided. There is cogent evidence that the Accused co-habited with the victim. The evidence of the victim that when she confronted the Accused in his place of work in the Kottur Bus stand from where he used to go for work as a driver of the SETC bus and who was co-habited with her for seven years and suddenly stop visiting them. Therefore, she went to his work place and enquired that why he had not joined them. For which he is alleged to have stated that she belongs to SC and he does not want to live with her and also stated that he has already



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married which amounts to promise to marry and having sexual intercourse which has to be interpreted to attract the ingredients of offence under Section 417 of I.P/C. The discussions by the learned Sessions Judge in the Judgment from Paragraph Nos.13 to 17 is found justified and acceptable. There is no ground to arrive at a conclusion that the Judgment of the learned Principal Sessions Judge is perverse.

18. The argument of the learned Counsel for the Appellant that there was no proof before the trial Court that the Accused married the victim, is also discussed by the learned Sessions Judge. It is the argument of the learned Counsel for the Appellant that offence under Section 417 of IPC had not been made out. The submission of the learned Counsel for the Appellant cannot at all be accepted in the light of the evidence available through P.W-1 to P.W-3, P.W-6 to P.W-8, the evidence regarding cohabitation is made out. The offence regarding 3 (I) (x) of SC/ST (PoA) is not attracted as according to the Act and according to the reported decisions, the abusive words had to be used in a public place where members of the public are to



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be witness. Here, the bus stand is a public place. The abusive words used by the Accused had been cogently mentioned by the victim. Her daughter and hearsay witnesses viz., her mother and her sister/P.W-3 and P.W-7 whereas there is no independent witnesses from the members of the general public who are expected to be in the Bus stand which is a public place. The Prosecution had not examined any independent witnesses regarding those offences. Therefore, the learned Judge having acquitted the Accused is found justified. The submission of the learned Counsel for the Accused/Appellant regarding the same is accepted. The argument of the learned Counsel for the Appellant that the offence under Section 417 of I.P.C is not made out, is rejected in the light of the evidence of P.W-1 to P.W-3, P.W-6 to P.W-8. The arguments of the learned Counsel for the victim that the offence is attracted is found justified but the same cannot be reversed. The Judgment of acquittal cannot be reversed on the ground that as rightly pointed out by the learned Counsel for the Appellant, members of the public ought to have been examined regarding the abusive words used against the victim in a public place and particularly Kottur Bus stand from



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where the Accused is stated to have commenced his trip as driver of SETC bus. Therefore, the finding of the trial Court cannot be reversed based on the argument of the learned Counsel for the victim. In short, the judgment of the learned Principal Sessions Judge, Coimbatore is found well reasoned Judgment that does not warrant any interference and the same is confirmed.

19. In the light of the above discussions, the point for consideration is answered in favour of the Prosecution and victim and against the Appellant/Accused. The Order passed by the learned Principal District & Sessions Judge, Coimbatore in Special S.C.No.12 of 2013, dated 06.09.2017 is to be confirmed.

In the result, this Criminal Appeal is dismissed as having no merits. The Order passed by the learned Principal District & Sessions Judge, Coimbatore in Special S.C.No.12 of 2013, dated 06.09.2017 is confirmed. The learned Principal District & Sessions Judge, Coimbatore is directed to issue warrant against the Appellant/Accused to secure him and detain him in



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prison to undergo the period of sentence imposed on him. The learned Principal District & Sessions Judge, Coimbatore is also directed to hold enquiry before the Legal Service Authority regarding the payment of compensation on the victim within a period of three months from the date of pronouncement of the order of this Court.

09.08.2024

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Index : Yes/No

Speaking/Non-speaking order



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To

1. The Principal District & Sessions Judge,
Coimbatore.
2. The Deputy Superintendent of Police,
Pollachi Division,
All Women Police Station,
Pollachi.
3. The Public Prosecutor,
High Court, Madras.

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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment made in
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