



Crl.A.No.757 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM

THE HONOURABLE **MRS.JUSTICE R.KALAIMATHI**

Crl.A.No.757 of 2018
and Crl.M.P.No.5851 of 2018

1. Palani
2. Sivalingam
3. Sivakumar
4. Sankari
5. Srinivasan

... Appellants

vs

State by
Inspector of Police,
Polur Police Station,
Thiruvannamalai District.
(Crime No.583 of 2013)

... Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence imposed on the Appellants herein in S.C.No.111 of 2015 by judgment dated 12.11.2018 passed by the Learned Principal District Sessions Judge, Thiruvannamalai, Thiruvannamalai District and acquit the appellants herein from all charges.



WEB COPY



Crl.A.No.757 of 2018

For Appellants : Mr.S.Ananthanarayanan
Senior Counsel
for M/s.K.Balu

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)

JUDGMENT

The appellants who were arrayed as A1 to A5 in S.C.No.111 of 2015 dated 12.11.2018 on the file of the Principal District Sessions Judge, Thiruvannamalai, Thiruvannamalai District have preferred this Criminal Appeal. They were convicted and sentenced as follows:-

Accused No	Provision under which convicted	Sentence
A1	1. Section 147 r/w 149 of IPC	2 years simple imprisonment and Rs.1000 fine in default simple imprisonment for 3 months
	2. Section 506(1) r/w 149 of IPC	2 years simple imprisonment and Rs.1000 fine in default simple imprisonment for 3 months.
	3. Section 3(1) X of SC & ST Act, 1989	3 years simple imprisonment and Rs.1000 fine in default simple imprisonment for 3 months.
	4. 323 (2) of IPC	1 year simple imprisonment and Rs.1000 fine in default simple imprisonment for 1 month.
A2	147 r/w 149 of IPC	2 years simple imprisonment and Rs.1000



Crl.A.No.757 of 2018

Accused No	Provision under which convicted	Sentence
A3	506 (1) r/w 149 of IPC 3(1) X of SC & ST Act, 1989	fine in default simple imprisonment for 3 months
A4		2 years simple imprisonment and Rs.1000 fine in default simple imprisonment for 3 months.
A5		3 years simple imprisonment and Rs.1000 fine in default simple imprisonment for 3 months.

2. The case of the prosecution in brief:-

i. The defacto complainant Srinivasan son of Raji, Modaiyur Village belongs to Hindu Irular Community. Accused 1 to 5 belong to Hindu Vanniyar Community. Both sides have land dispute and inimical to each other. On 16.12.2013, at about 15:00 hours, at Modaiyoor Village, in a common place near the land the Accused No.1 to 5 formed unlawful assembly with a common intention to insult the complainant and abused the parents of the defacto complainant by caste name stating "இருளர்,,, பையர்",

ii. Accused No.1 assaulted the father and mother of the complainant with a stick, caused simple injuries and all the accused made threats to the



complainant to cause death. Thereby, they were charged under Section 147, 323, 506 (1) IPC and under Section 3 (1) (X) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against Accused No.1 and as against A2 to A5 under Section 147, 506 (1) IPC and under Section 3 (1) (X) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

3. The final report was taken cognizance by the Judicial Magistrate of Polur and on appearance of accused, accused were furnished with the documents that were relied upon by the prosecution and the statements of the witnesses under Section 208 Cr.P.C.

4. Thereafter on committal, the Principal District Judge of Thiruvannamalai took cognizance of the case. Upon consideration, charges under Section 147 read with 149, 323, 506(1) read with Section 149 IPC and under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 as against Accused A1 and charges under Section 147 read with 149, 506(1) read with 149 IPC and under



Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 as against accused No.2 to 5 were framed. When the accused were questioned as to the charges they denied the charges.

5. In order to substantiate the charges the prosecution examined 10 witnesses and 10 documents were marked. On the defense side one document was marked. Accident Register pertains to Accused No.1 dated 16.12.2013 is Ex.R1.

6. P.W.1 Srinivasan is the defacto complainant. P.W.2 Raji and P.W.3 Valliammal are his parents. P.W.4 Selvamani and P.W.5 Krishnan are the observation mahazar witnesses. P.W.6 Mr.Muthukumaraswamy and P.W.7 Mr.Babu are the Revenue Officials who have issued Community Certificates for the defacto complainant and for the accused No.1 to 5 (Ex.P.4 and Ex.P.5). P.W.8 Dr.Rani has treated P.W.2 Raji, P.W.3 Valliammal and issued Accident Registers Ex.P.6 and Ex.P.7. P.W.9 Mr.Manokaran, Special Sub Inspector of Police had conducted preliminary investigation. P.W.10 Mr.Ganesan, Deputy Superintendent of Police, Polur Taluk was the



Crl.A.No.757 of 2018

Investigation Officer.

WEB COPY

7. The defacto complainant (P.W.1), his father and Mother (P.W.2 and P.W.3) belong to Hindu Irular Community as per Ex.P.4 report. As per Ex.P.5 (series), Community Certificates, the accused No. A1 to 5 belong to Hindu Vanniyar Community.

8. The case of the prosecution as projected through its witnesses have been given hereunder:-

On hearing about the occurrence, P.W.1 Srinivasan went to the scene of occurrence and told the accused that case is pending in respect of the land dispute and for that, accused abused him by caste name and stating "இருளர் பையா, ஒரு லுட்டுக்காரனா இருந்து ஆட்டம் போடுறியே என்றும், குடும்பத்தோடு ஒழிச்சிடுவேன் என்று மிரட்டினார்கள்" and took the Cellphone with Rs.2,000/- which were kept in his pocket. It is his specific evidence that he did not witness the assault made on his parents. His evidence explicates that there is a criminal case pending against the defacto complainant before the Judicial Magistrate Court, Polur. During his cross examination, he has



stated that though he gave a complaint on the date of occurrence at about 5.00 p.m. itself, his complaint was not received by the police.

9. From the cross examination of P.W.1, it is evident that the 1st accused Palani was admitted in the hospital at the first instance. Father of P.W.1 is Raji Chinnasamy.

10. It is the evidence of P.W.2 Raji that on a day in the year 2013 at about 3:00 p.m. when he was at his land, Accused Nos. 1 to 5 came there with a tractor and attempted to plough the land and when he told them not to plough the land they went off and again at about 3:00 p.m. Accused Nos.1 to 5 came to the land and ploughed the lands. When he attempted to prevent the same, Accused No.1 Palani abused him by caste name by stating that "இருளர் பையா உங்களுக்கு எங்கே நிலம் எங்கே இருக்கிறது", It is his further evidence that he was assaulted by accused Palani on his head and immediately he lost consciousness. His wife Valliyammal who was working in 100 days employment scheme came there and she was also assaulted by the accused Palani (A1) and Shankari (A4) on her back. The said four



accused assaulted their son Srinivasan who came there on information and they snatched his Ayyappan Malai, Cellphone and amount of Rs.2,000/- kept in his pocket. PW2 was admitted as in-patient in the hospital for seven days.

11. During the cross examination of PW2, he has stated that there is a civil case pending between him and the accused. He has also admitted that at the time of occurrence, public person was not there.

12. P.W.3 Tmt.Valliyammal is the wife of PW2. It is the evidence of P.W.3 that two years before at about 3:00 p.m. she came to know that her husband was assaulted at their land. She went to the land and her husband (PW2) told her that Palani (A1) and Shankari (A4) assaulted him with a wooden log on his head. It is her further evidence that she was caught hold of by the accused Palani and Shankari. She was assaulted by Palani. Her son Srinivasan was informed of the occurrence and her husband was taken to the Athimoor hospital by Ambulance.

13. It is the evidence of P.W.4 Selvamani that five years before when



he had been to the residence of Srinivasan (defacto complainant) at the request of police, he signed in the observation mahazar (Ex.P2).

14. It is the evidence of Dr.A.Rani (PW8) that on 16.12.2013 at about 5:55 p.m. Raji, S/o. Chinnasamy was brought in a 108 Ambulance to the Polur Government Hospital. On enquiry, he told that he was assaulted by five known persons on the same day at about 2:30 p.m. near his land. Accident Register of Raji (PW2) is Ex.P.6. He was admitted as inpatient and given treatment. 7 following injuries were found on him.

1. Contusion on the centre of the head measuring 4 x 3 cm
2. Aberation over (i) Left knee (2x2cm)
(ii) Left ankle (3 x 1 cm)
(iii) Medial aspect of left foot (4 x 3 cm)
(iv) Left great toe (1 x 1 cm)
3. Tenderness over left knee
4. Contusion over right orbit

she has opined that the injuries are simple in nature.



15. It is her further evidence that on the same day at about 6:00 p.m. Tmt.Valliyammal, W/o.Raji was brought in 108 Ambulance to the Government Hospital, Polur. On enquiry she told that she was assaulted by known five male and one female persons by hands and legs near their land. She was admitted as inpatient. She complained of pain over her knee. No external injuries were found on her. Accident Register of Valliyammal is Ex.P7.

16. During her cross examination (PW8) she has stated that on the same day at about 3:00 p.m. one Palani [A1] was brought to the Government Hospital, Polur by one Srinivasan and on enquiry he told that at about 3:00 p.m. he was assaulted by two known female persons by aruval, stone, stick, hands and legs near their land. The following injuries were found on him.

1. deep laceration over forehead exposing bone measuring 5 x 2 x 2 cm
2. abrasion over i) left knee measuring 2 x 2 c.m ii) on the left ankle an injury measuring 4 x 3 c.m.
3. Abrasion over right big toe measuring 1 x 1 cm and
4. complained of pain on the back of the left leg.



Accident Register of Palani is Ex.P1. She has opined that injuries are simple in nature.

17. P.W.10 Mr.Ganesan, Deputy Superintendent of Police, Polur Taluk took up the case for investigation. He went to the scene of occurrence and prepared observation mahazar Ex.P9 and Rough Sketch Ex.P.10. He obtained the community certificates of the accused by examining Thasildhar, Thiru.Babu (PW7). So also he examined Mr.Muthu Kumarasamy, Revenue Divisional Officer of Polur and obtained the report about the details of community of the defacto complainant and his parents. Dr.Rani was examined by him and the Accident Register of PW2 & PW3 were obtained from her.

18. Mr.S.Anantha Narayanan, learned Senior counsel appearing for the appellants vehemently argued that one Lakshmi who is said to have informed about the occurrence to the defacto complainant was not examined as a prosecution witness. FIR was registered after 10 days of occurrence and the delay was not explained. He would further contend that Palani/Accused No.1



sustained injuries during the occurrence. It is his further argument that as per Rule 7 (1) of SC/ST Rules Investigating Officer was not appointed by his higher officials. This procedure is a mandatory one and non compliance of the said rule is fatal to the prosecution.

19. To buttress his argument, Mr.S.Anantha Narayanan, learned Senior Counsel referred to the following judgments:-

(i). ***K. Raghupathi Vs State Rep. by The Inspector of Police, J1 Saidapet Police Station, Chennai*** in Crl.A.No.230 of 2007 dated 18.12.2014, wherein it is held that the investigation done by the investigating officer is without jurisdiction as they were not properly appointed under Rule 7 of the SC & ST Rules (PA act), therefore the investigation is vitiated.

(ii). ***State of Punjab Vs Rajinder Singh*** reported in (2009) 15 SCC 612 in order to contend that the omission on the part of the prosecution to explain the injuries on the person of the accused assumed much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a



version which competes in probability with that of the prosecution case.

WEB COPY

(iii). **V. Ponnusamy Vs State Rep. by Deputy Superintendent of Police, Palladam Range, Kamanaicken Palayam Police Station, Coimbatore** reported in (2016) 3 MWN (Crl) 148 wherein it has been observed by this Court that “....Now in this case, PW15, Subramaniam, Deputy Superintendent of Police, Avinashi Sub Division took up his investigation on 25.04.2007. No materials or records to show that he has been empowered to undertake the investigation with required authorisation as contemplated under Rule 7 (1)”. Under such circumstances, **Ponnusamy's** case squarely applies to this case and conviction and sentence imposed on the appellant under Section 3 (1) X of S.C & S.T (PA) Act, 1989 and 506 (ii) IPC were set aside by allowing the criminal appeal.

20. Mr.S.Anantha Narayanan, learned Senior Counsel submitted that the 1st Accused Palani was the first person who got admitted in the hospital.



He would further contend that the 1st Accused sustained serious injuries over his frontal skull, besides other injuries.

21. Per contra, Mr.Udhayakumar, learned Government Advocate (Crl.side) vehemently contended that as regards the offence under Section 323 of IPC, PW2 & PW3 have explained about the assault made on them by the accused. It is his further argument that PW1 has spoken about the offence committed by the accused under Section 3(1)X of SC & ST Act, 1989. It is also relevant to refer to the observations made by this Court as well as the Apex Court.

(iv). In the case of **H.Thenmozhi Vs Inspector of Police P.R.Unit, St.Thomas Mount Police Station, Chennai** reported in (2006) 2 MLJ (Crl.) 463 wherein it is held by this Court that investigation done by the Inspector of Police vitiates the entire proceedings and the accused is entitled to acquittal. Investigation has been done by the Inspector of Police and the same has been forwarded to the Deputy Superintendent of Police to investigate the matter further, probably considering the facts, took the view



that the same would vitiate the entire proceedings.

WEB COPY

(v). In *state of Madhya Pradesh Vs Chunnilal @ Chunni Singh* reported in (2010) 1 SCC (Cri) 683 it was concluded by the Hon'ble Supreme Court that a reading of Section 9 of SC & ST (PA) Act, Rule 7 of SC&ST Rules 1995 and Section 4 of the Cr.P.C would lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid.

(vi). In the case of *State of Punjab Vs Hardial Singh and others* reported in (2010) 1 SCC (Cri) 683, the Apex Court has held that the investigation done by police officer not specifically authorised in terms of Section 3 of the Act is illegal qua the offence relating to SC & ST (PA) Act.

(vii). In *Sambasivam and another Vs State rep. by Deputy Superintendent of Police, Mannarkudi* reported in 2007 (1) MLJ (Crl) 654 this Court has concluded that investigation by



police officer not specifically appointed under Rule 7 of SC&ST Rules is illegal.

(viii) This Court in *V.P.Kuppurao Vs The Director General of Police, Tamil Nadu and others* reported in (2010) 1 MLJ (Crl) 247. and in the case of **Ponnusamy Vs State Rep. by Deputy Superintendent of Police, Palladam Range, Kamanaicken Palayam Police Station, Coimbatore** reported in (2016) 1 LW (Crl) 761 has held that the investigation of an offence under Section 3 of SC & ST Act by a police officer who was not appointed in terms of Rule 7 of the SC & ST (PA) Act is totally invalid.

22. The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offence for atrocities against the members of the scheduled castes and the scheduled tribes and to provide Special Court and Exclusive Special Courts for the trial of such offence. The Act was enacted in the year 1989, whereas the Rules were framed in the year 1995 in exercise of the powers conferred



by Sub Section 1 of 23 of SC & ST Act by the Central Government and brought into force on 31.03.1995.

WEB COPY

23. A careful perusal of Rule 7 (1) of SC & ST Rules, 1995 mandates that if an offence is committed under the Act, it shall be investigated by a Police Officer not below the rank of Deputy Superintendent of Police.

24. It is useful to refer to the provisions of Rule 7 (1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and the same is extracted as hereunder:-

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 right lines within the shortest possible time.



WEB COPY

25. This Rule stipulates that he shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account of his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time. Therefore, the State is under obligation to appoint Police Officer not below the rank of Deputy Superintendent of Police to investigate into the offence committed under the Act. There are instances that the offence committed under this Act have been investigated by the Sub Inspector of Police or Inspector of Police. Considering the nature of the offence and its implications it was thought fit to frame rules under this Act. In Rule 7(1) the word “shall” is used which connotes and mandates that it is mandatory. The Hon'ble Supreme Court of India and this Court as mentioned below have held that non compliance of Rule 7 (1) of SC & ST Act Rule 1995 is invalid.

26. In this case, the investigating officer is Mr.Ganesan, Deputy Superintendent of Police, Polur Taluk (PW10). It has come on record through the evidence of PW10/Investigation Officer that as per the nature of the case



he took up the case for investigation and conducted investigation. During his cross examination when he was questioned as to whether he was specially appointed to investigate the matter he has answered in positive. However, the proceedings, authorising PW10 to investigate the case under SC&ST Act was not marked during the trial. Rule 7 (1) of SC&ST Rules is mandatory in nature. It is elicited from P.W.10 Ganesan, Deputy Superintendent of Police, Polur Taluk that as the proceedings appointing him as Investigating Officer is not marked. It has to be construed that Rule 7 (1) was not complied with.

27. In the result, the investigation has to be held as invalid. Therefore as regards the charge under Section 3 (1) X of SC & ST Act, 1989 charge against Accused No.1 cannot be held to have been proved.

28. PW2 Raji and PW3 Valliyammal are injured witnesses. It is the evidence of PW2 that he was assaulted by Accused No.1 whereas it is his specific evidence that during the occurrence he was alone, his evidence is corroborated by evidence PW8 Dr.Rani. It is discreditable from the perusal of Accident Registrar of PW2 that he sustained contusion on his head measuring



4 x 3 cm.

WEB COPY

29. It is the evidence of PW3 Valliyammal that she was assaulted by Palani (A1). She was treated by Dr.Rani PW8. It has come on record that Valliyammal complained of her pain over her knee.

1. Contusion on the centre of the head measuring 4 x 3 cm
2. Aberation over (i) Left knee (2x2cm)
 - (ii) Left ankle (3 x 1 cm)
 - (iii) Medial aspect of left foot (4 x 3 cm)
 - (iv) Left great toe (1 x 1 cm)
3. Tenderness over left knee
4. Contusion over right orbit

30. On perusal of the evidence of PW8 Dr.Rani coupled with the Accident Register copy of Accused No.1 Palani (Ex.R1) it is made clear that Accused No.1 also sustained injuries as mentioned supra. No doubt, accused and PW1 to PW3 are in inimical terms with regard to land dispute. It is not in dispute that a suit is pending between PW2 and Accused. Therefore, in the



Crl.A.No.757 of 2018

said state of circumstances and based on the above said discussion, this Court is of the view that the charge under 3(1) X of SC & ST Act, 1989 and charge under Section 147, 506 (ii) are not proved beyond reasonable doubt by the prosecution side. 1st Accused alone is found guilty under Section 323 IPC (2 counts) and he shall pay fine of Rs.1000/- each i.d 3 months Simple Imprisonment.

31. In fine, this Criminal Appeal is partly allowed. The accused are acquitted from all the charges framed against them. Bail bonds if any executed by the accused No.2 to 5 shall stand cancelled. The appellants/accused No.2 to 5 are entitled for refund of fine amount.

26.03.2024

Index : Yes/No
Internet : Yes/No
mac/dpq



WEB COPY



Crl.A.No.757 of 2018

R.KALAIMATHI, J.

mac/dpq

To

- 1.The Learned Principal District Sessions Judge,
Thiruvannamalai District.
2. Deputy Superintendent of Police,
Polur Taluk,
Polur Police Station.
- 3.The Public Prosecutor,
Madras High Court, Chennai.

Crl.A.No.757 of 2018