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Crl. A. No.800 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

CORAM : **JUSTICE N.SESHASAYEE**

Criminal Appeal No.800 of 2018

Mani @ Subramaniam

... Appellant

Vs.

State Rep. by
The Deputy Superintendent of Police
Bhavani Sub-division
Bhavani
[Appakkudal Police Station,
Crime No.227 of 2017]

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code to set aside the order of conviction dated 16.11.2018 in Spl. S.C. No.19 of 2018 on the file of Special Court for Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Principal Sessions Court), Erode.

For Petitioner : Ms.S.Yogalakshmi

For Respondents : Dr.C.E.Pratap
Govt. Advocate (Crl.Side)
Assisted by Ms.J.R.Archana



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JUDGMENT

The sole accused who faced trial for charges under Sec.294(b) of IPC., r/w. Sec.3(1)(r) & (s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015; Sec.326 IPC r/w. 3(2)(va) SC/ST (Prevention of Atrocities) Amendment Act, 2015; and Sec.506(ii) of IPC r/w. Sec.3(2)(va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015, was found guilty, and faced with a sentence of 5 years simple imprisonment and total fine amount of Rs.11,000/-, with a default sentence of six months simple imprisonment imposed on him, has come forward with this appeal.

2.1 The prosecution line of the case commences that the victim of the offence (P.W.1) preferring Ext.P1 complaint, wherein it was alleged that on 24.08.2017 at about 10.45 a.m., when he intervened to question the accused who was then seen abusing P.W.4, a nephew of the victim, the accused alleged to have abused P.W.1 with reference to his community, went to his house, picked up M.O.1, billhook and assaulted P.W.1 with M.O.1, on his forehead and when P.W.1 attempted to prevent the same, he had deep lacerated injuries to his left palm.



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2.2 Receiving the said compliant, P.W.6, the Sub Inspector of Police registered Ext.P8 FIR under Secs.294(b), 324, 506 (ii) IPC r/w. 3(1)(r); 3(1)(s) and 3(2)(va) of SC/SC (Prevention of Atrocities) Amendment Act, 2015. The investigation was then taken over by P.W.7, based on Ext.P9 authorisation. P.W.7 would then visit the scene of occurrence, prepared his Ext.P6 observation mahazar and Ext.P10, rough sketch. The accused by then had ran away from the scene of occurrence leaving the weapon, which P.W.7 had seized under Ext.P7, seizure mahazar, in the presence of P.W.5 and another.

2.3 In the meantime, the victim was taken to Government Hospital, Bhavani, where P.W.2 doctor received him and noted the injuries. He issued Ext.P3, accident register. The victim was hospitalised for six days and he was also said to have suffered a fracture to his nasal bone, owing to the assault. Later, P.W.2 issued Ext.P4 wound certificate, on which, P.W.7 altered the crime from 324 IPC to 326 IPC. After completing the investigation, P.W.7 laid the final report. The trial Court then proceeded to frame charges, and during trial, the appellant herein denied the charges levelled against him.



2.4. The matter went to trial, during which the prosecution examined 7 witnesses, of whom the critical witnesses have already been introduced. It has also produced Ext.P1 to Ext.P14 and also M.O.1. After evaluating the evidence, the learned trial Judge found the appellant guilty, has recorded all the three sets of charges framed against him under SC/ST Act, and imposed multiple sentences which reads as below :

Charges		Sentence imposed
Charge I	u/s 294(b) of IPC	SI for a term of three months, with a fine of Rs.2,000/- i/d SI for 15 days
Charge II	u/s 3(1)(r) & 3(1) (s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015	SI for a term of five years with a fine of Rs.5,000/-, i/d SI for six months
Charge III	u/s 326 of IPC r/w 3(2)(va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015	SI for a term of five years with fine of Rs.3,000/-, i/d SI for six months
Charge IV	u/s 506(ii) of IPC r/w 3(2)(va) of SC/ST (Prevention of Atrocities) Amendment Act, 2015	SI for a term of five years with fine of Rs.1,000/-, i/d SI for three months

This judgment is now under challenge in this appeal.

3. The learned counsel for the appellant made the following submissions :

a) The case of the prosecution was that on the date of occurrence, the



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appellant had abused both P.W.4, the nephew of the defacto complainant P.W.1, with reference to their community and assaulted P.W.1 with a billhook. However, neither P.W.1 nor P.W.4 had deposed that the appellant had ever abused them with reference to their caste. Not only that, even P.W.3, the wife of P.W.1, whom the prosecution had examined to corroborate P.W.1, did not accuse the appellant having abused her husband with reference to their caste. Therefore, the conviction of the appellant by the trial Court under Sec.3(1)(r) & 3(1)(s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015, cannot be sustained since the same is not backed by evidence;

- b) Turning to the alleged offence under Sec.326 IPC and 506(ii) IPC are concerned, the evidence nowhere state that these offences were perpetrated solely on the ground that P.W.1 belonged to Scheduled Caste community. Neither the evidence of P.W.1 nor the evidence of P.W.3, and not even the evidence of P.W.4 indicate the same. Indeed, P.W.4 in his evidence has indicated that there was some discussion between the appellant and P.W.4's father about the purchase of some property, which later developed into an altercation. When the cause for the crime pertains to certain dispute over the land-deal, no provisions of SC/ST (Prevention of Atrocities) Amendment Act, 2015, can be invoked.



c) Turning to offence under Sec.326 IPC is concerned, three injuries were noted and only the fracture of nasal bone was treated as an offence under Sec.326 IPC. However, P.W.2, the doctor who treated P.W.1 did not say that P.W.1 had suffered cut injuries. If billhook was used, necessarily there would have been cut injuries and not lacerated injuries. Indeed, even if a person fall on a rough surface with face upside down, the same injury could be caused.

Summing up his arguments, the learned counsel submitted that the weapon alleged to have used for the crime and the nature of injuries do not tally. And when the motive for the offence is not set, the benefit of doubt should be surely given to the appellant.

4. Per contra, the learned Prosecutor submitted that the fact remains that P.W.1 was injured and without any loss of time, he was taken to hospital by P.W.3. Indeed P.W.3 corroborates P.W.1 on the point of the appellant assaulting P.W.1. Indeed, even in the cross-examination of P.W.1, it was suggested to him about same land-deal which brewed strong differences between the two groups. Therefore, the motive indeed had been admitted by the appellant itself. And he proceeded to adopt the line of reasoning of the trial Court as his line of argument.

5.1 Rival submissions are carefully weighed and there is considerable merit in this. This Court carefully perused the entire evidence on record and nowhere it finds that



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the appellant had abused P.W.1 or P.W.2 with reference to their community.

Secondly the motive for the offence which gets established through the evidence of P.W.4, where he had deposed in his chief-examination that a certain discussion over the land deal between the appellant and his father had developed into an altercation. This would imply that the appellant did not entertain anything against P.W.1 based on his community. Therefore, no offence under the provisions of SC/ST Act will be attracted.

5.2 It is not in dispute that the nasal bone of P.W.1 was fractured which imply the injury was a grievous injury, and this Court does not find anything to disbelieve the prosecution's version that the appellant had assaulted P.W.1.

6. This Court necessarily have to confirm the judgment of the trial Court convicting the appellant for offence under Sections 294(b), 326 and 506(ii) IPC. Turning to sentence part, this Court finds the trial Court has imposed a sentence of five years simple imprisonment on the appellant with a fine of Rs.5,000/-. Given the nature of injury and given the fact that there was no previous enmity, this Court finds that the sentence slapped on the appellant by the trial Court is far excessive and disproportionate to the nature of the offence. And this has to be necessarily reduced.



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7. In conclusion, this appeal is partially allowed. This Court confirms the judgment of the trial Court convicting the appellant only for the offence under Sec.294(b) and acquits him for all the offences under Section 3(1)(r) & 3(1) (s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015. Turning to the sentences, this Court confirms the sentence imposed on the appellant for offence under Sec.294(b), and so far as the offence under Sec.326 IPC and 506(ii) IPC are concerned, it reduce the sentence from five years to one year for offence under Sec.326 IPC., and six months for offence under Sec.506(ii) IPC. As to the rest, this Court confirms the fine imposed on the appellant. The trial Court is now required to secure the appellant for him to undergo the remaining period of sentence.

13.08.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

Asr/ds

To

1.The Special Court for Scheduled Caste
and Scheduled Tribes (Prevention of Atrocities) Act, 1989
(Principal Sessions Court), Erode.

2.The Public Prosecutor
High Court, Madras



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N.SESHASAYEE, J.

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