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Crl.A.No.1297 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.1297 of 2022

1.Balakrishnan
2.Pandiyan

... Appellants

Vs.

1.The State rep. by
The Deputy Superintendent of Police,
Tirukoilur Sub-Division.

2.The State rep. by
The Sub Inspector of Police,
Moongithuraipattu Police Station,
Villupuram.
(Crime No.143/2019)

3.Selvakumar

... Respondents

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records pertaining to Sessions Case No.17 of 2020 dated 30.09.2022 on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, 1989, Villupuram and set aside the sentence and conviction.



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For Appellants : Mr.P.Tamilavel
For R1 & R2 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)
Assisted by Ms.Harshana.T.
For R3 : No appearance

JUDGMENT

This Criminal Appeal is filed to set aside the impugned judgment in S.C.No.17 of 2020 dated 30.09.2022 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, 1989, Villupuram.

2.The appellants/A1 and A2 in S.C.No.17 of 2020 was convicted by the Trial Court by judgment dated 30.09.2022 and sentenced as follows:

- ◆ A1 and A2 are sentenced to undergo one year simple imprisonment for the offence under Section 448 IPC;
- ◆ A1 and A2 are sentenced to undergo one year simple imprisonment for the offence under Section 506(ii) IPC;
- ◆ A2 is sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment for the



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offence under Section 3(1)(r) of SC/ST (POA) Amendment Act, and

- ♦ A1 and A2 are sentenced to undergo one year simple imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo six months simple imprisonment for the offence under Section 3(2)(va) of SC/ST (POA) Amendment Act.

3.The learned Government Advocate (Crl. Side) submitted that in this case, A2/second appellant passed away on 26.09.2024 and death certificate produced. Hence, the Criminal Appeal against the second appellant/A2 stands abated.

4.The brief facts of the case is that on 01.09.2019 in Moongilduraipattu Government School, TNPSC Group-IV exams conducted. The defacto complainant/P.W.1, a Revenue Inspector was deputed for exam duty, at that time, A1/Balakrishnan trespassed into the Examination Centre, threatened the defacto complainant to permit him to take sand from Thenpennai river bund for which the defacto complainant refused and A1 left the place. Thereafter at about 3.30 p.m., again A1 came



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along with his son, trespassed into the Examination Centre, forced the defacto complainant to permit them to take sand and A2 further claimed that higher officials of Revenue Department are in his pocket, the defacto complainant is only a Revenue Inspector. A2 further stated that he belongs to Gounder Community and the defacto complainant belongs to Scheduled Caste Community and threatened him that he will be done away. Again on the same day at about 7.30 p.m., A2 called the defacto complainant from his mobile phone 9597166182, abused the defacto complainant stating that he is collecting money with others and permitting them to take river sand in their two wheelers and the same pictured by him and it will be uploaded in Youtube and also complaint will be lodged to higher officials. Thereafter, A2 again threatened the defacto complainant in his mobile number 9655410583 stating that he would kill him. The defacto complainant informed to his superior officers, no action taken, thereafter defacto complainant lodged a complaint on 05.09.2019. P.W.9/Sub-Inspector of Police received the complaint/Ex.P1, registered FIR/Ex.P5 and M.O.1/CD containing the call recordings collected. The Superintendent of Police issued proceedings/Ex.P7 authorizing P.W.10/Deputy Superintendent of Police to investigate the case since the case involves SC/ST Act. Thereafter,



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P.W.10 examined the defacto complainant, the witnesses present in the scene of occurrence, prepared observation mahazar/Ex.P8, rough sketch/Ex.P9 and arrested the accused, collected community certificates of defacto complainant and the accused, Ex.P3 and Ex.P4. On conclusion of investigation, charge sheet filed. During trial, P.W.1 to P.W.10 examined, Ex.P1 to Ex.P9 marked and M.O.1 produced on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellants as stated above.

5.This Court finding that the appeal is against the conviction of the appellants including the offence under SC/ST Act, issued notice to the defacto complainant. On 20.02.2025, the defacto complainant appeared before this Court and submitted that his main grievance was against A2/Pandian and since he is no more, he is not interested in pursuing the case. Thereafter, this Court appointed one Mr.S.Anbzhagan as legal aid counsel. On 11.03.2025, the said Mr.S.Anbzhagan, learned counsel submitted that the defacto complainant contacted him and informed that he is not inclined to proceed with the case against the present appellant/A1 and the same



recorded.



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6.The learned counsel appearing for the appellants submitted that in this case, P.W.1 is the victim and the other witnesses, P.W.2 to P.W.5 are the eye witnesses, present in the scene of occurrence, but not supported the case of the prosecution. P.W.7 and P.W.8 are the Tahsildar and Revenue Divisional Officer who issued community certificate for the defacto complainant and the accused. P.W.9 is the Sub-Inspector of Police who received the complained and registered FIR, P.W.10 is the Investigating Officer. Except for P.W.1, no eye witness to the occurrence supported the case of the prosecution. In this case, the alleged occurrence is said to have taken place on 01.09.2019, but the complaint lodged on 05.09.2019 with a delay of four days, no explanation given for the delay. Further, P.W.1 admits that TNPSC Group-IV exams conducted in the School at the time of occurrence, there were invigilators, officials and Police Personnel present in the School but in this case none examined. Had there been Police Personnel present in the venue, it is natural that he would have intervened if the appellants trespassed into the School and abused the defacto complainant. Further, the defacto complainant not produced any document to show that he



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was on deputation duty for TNPSC exams. As far as A1 is concerned, he is only said to have trespassed into the School, threatened him and there is no use of any prohibitory words or calling the victim by his caste name. This allegation is attributed to A2, who is no more. He further submitted that P.W.2 is the Watchman in the School, P.W.3 to P.W.5 are public witnesses, all hail from the Village and have no reason to be present inside the School compound. P.W.6 who is the observation mahazar witness confirms that he is a two wheeler mechanic and the Police called him and he signed. Hence, it is confirmed that none from the scene of occurrence examined. Further, the occurrence is said to have been taken place near the Verandah of the School but in Ex.P8/observation mahazar and Ex.P9/rough sketch, there is no mention about any Verandah. Thus the evidence of P.W.1 is highly doubtful for some reason he wants to implicate the appellants. Further, in this case the Investigating Officer admits that the evidence of P.W.1 is with improvements and contradictions. The Trial Court failed to consider all these aspects, but on the tainted evidence of P.W.1 convicted the appellants. Hence, prayed for setting aside the conviction and sentence.

7.In support of his contention, the learned counsel for the appellants



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relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Avtar Singh*** reported in ***(2009) 10 SCC 800*** for the point of delay in lodging FIR. He further relied upon the decision in the case of ***Kannan @ Mannanai Kannan and others vs. State rep. by The Inspector of Police, C5 Karimedu (L&O) Police Station, Madurai City*** reported in ***2022 1 LW(Crl.) 364*** for the point that hostile witness can never be substantive evidence.

8.The learned Government Advocate (Crl. Side) strongly opposed the petition's contention and submitted that in this case, the victim/defacto complainant is a Revenue Inspector, who was deputed for TNPSC exam duty on 01.09.2019, at that time, the first appellant came there and forced the defacto complainant to permit him to mine river sand from Thenpennai river bund which was objected by the defacto complainant. Thereafter, again at about 3.30 p.m. the first appellant/A1 came along with his son A2/second appellant in a two wheeler abused the defacto complainant and A2 called him by his caste name in public and also threatened him for not permitting illegal mining of river sand. A2 further claimed that he belongs to Gounder community and the defacto complainant belongs to Scheduled caste



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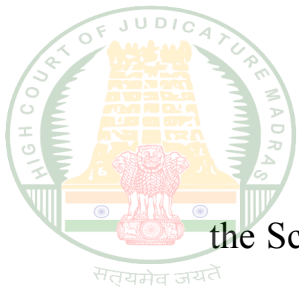
community and he has got no right or moral to oppose the Gounder community people. A2 claims that he has got wide contacts with higher officials and he can remove the defacto complainant within no time. Again at about 7.30 p.m., A2 threatened the defacto complainant through his mobile phone which was recorded by the defacto complainant. After informing the superior officers, the defacto complainant waited for some time to take action and thereafter lodged a complaint on 05.09.2019, hence there was a delay. He would further submit that in this case, P.W.3 to P.W.5, all belong to the caste and community of appellants and hence, it is quite natural that not supported person belonging to deprived community instead supported the accused who belongs to their clan. In this case, P.W.1 being a Revenue Inspector has got no axe to grind against the accused and nothing suggested that there was some enmity or animosity between the defacto complainant and the appellants. The Investigating Officer after registration of the case, recorded the statements, collected documents and thereafter filed charge sheet. It is not number of witness that counts, the evidence of PW1 alone is sufficient which inspires confidence and the Trial Court rightly convicted the appellants relying on the evidence of P.W.1. Hence prayed for dismissal.



WEB COPY 9. In support of his contentions, the learned Government Advocate (Crl. Side) relied upon the decision of the Hon'ble Supreme Court in the case of **Hariprasad @ Kishan Sahu vs. State of Chattisgarh** reported in (2024) 2 SCC 557, wherein it is held as follows:

“10. Of course, the delay in lodging an FIR by itself cannot be regarded as the sufficient ground to draw an adverse inference against the prosecution case, nor could it be treated as fatal to the case of prosecution. The Court has to ascertain the causes for the delay, having regard to the facts and circumstances of the case. If the causes are not attributable to any effort to concoct a version, mere delay by itself would not be fatal to the case of prosecution.”

10. Considering the submission and the materials, it is seen that in this case except for PW1 and the official witnesses, namely, P.W.7 to P.W.10, all the other witnesses not supported the case of the prosecution. P.W.2 to P.W.5 are the eye witnesses to the occurrence. P.W.2 is the Watchman of



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the School. On the day of occurrence i.e. On 01.09.2019 TNPSC Group-IV exam was conducted and defacto complainant was deputed for exam duty.

During TNPSC exams, Police Personnel will be posted in the Exam Centre, apart from the defacto complainant, there will be other invigilators, TNPSC staff and staff from the Collectorate all posted for smooth conduct of the exam. The place will be secured and regular patrolling of the Police is a norm. In this case, P.W.1 submits that at 2.15 p.m., he was abused by the first appellant followed by 3.30 p.m. Along with his son and thereafter at 7.30 p.m., A2 abused and threatened through the mobile phone. Had that been so, it is quite natural it should not have gone unnoticed by the Armed Police and others present in the Exam Centre. Further the mobile recordings though have been produced as M.O.1, it was not with any certificate under Section 65B of the Indian Evidence Act and not subjected to forensic examination. Hence, M.O.1 loses its significance. Further in this case except for P.W.1 none supported the case of the prosecution. The evidence of P.W.1 is with exaggeration and contradictions which becomes doubtful and there is no other material to corroborate the evidence of P.W.1 hence, convicting the appellants on the sole evidence of P.W.1 may not be proper. In view of the above, this Court is inclined to set aside the conviction and



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sentence imposed by the Trial Court.

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11..In the result, this Criminal Appeal stands allowed inso far as the first appellant/A1 is concerned, setting aside the judgment dated 30.09.2022 in S.C.No.17 of 2020 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, 1989, Villupuram. The first appellant is acquitted. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

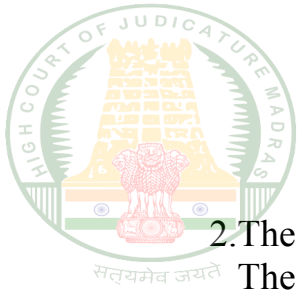
12.As regards the second appellant/A2, the Criminal Appeal stands dismissed as abated.

22.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

To

1.The Deputy Superintendent of Police,
Tirukoilur Sub-Division.



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2.The State rep. by
The Sub Inspector of Police,
Moongithuraipattu Police Station,
Villupuram.

3.The Sessions Judge,
Special Court for Exclusive Trial of Cases
registered under SC/ST (POA) Act, 1989,
Villupuram.

4.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery judgment made in

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