

Crl.A.(MD).No.105 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.12.2024
Pronounced on : 15.05.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.105 of 2020

Velusamy

... Appellant/Accused No.1

Vs.

The State Represented by,
The Deputy Superintendent of Police,
Karur Rural Division,
Karur.
Cr.No.461 of 2017

... Respondent/Respondent

PRAYER : Criminal Appeal filed has been under Section 374 of the Criminal Procedure Code, to set aside the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Karur, in S.C.No. 32 of 2018, dated 10.02.2020.

For Appellant : Mr.S.Ramasamy

For Respondent : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

: Mr.T.Thirumurugan
(for Defacto complainant)



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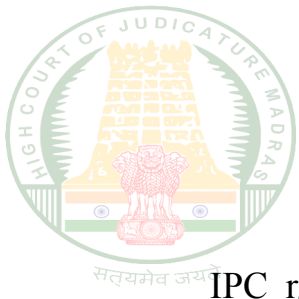
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JUDGMENT

The appellant/A1 in S.C.No.32 of 2018, on the file of the learned Principal Sessions Judge, Karur, filed this appeal challenging the conviction and sentence imposed against him, in S.C.No.32 of 2018, dated 10.02.2020, by the learned Principal Sessions Judge, Karur, and acquit the appellant.

2. The Brief facts of the prosecution case reads as follows:

The defacto complainant and the accused belong to the same village. On 02.11.2017, when the defacto complainant and his brother were fetching water in the tank, the appellant herein, who passed through that way on a bike with his wife (A2) is said to have abused P.W.1 by using his caste name stating that how P.W.1 could defecate on the road side since the agricultural land of the appellant was located behind that place. When the same was denied by P.W.1, A2 caught hold P.W.1's hands from his back and the appellant attacked P.W.1 on his neck & hip and caused injuries. When the same was questioned by P.W.1's brother, he pushed him down on the road. Then P.W.1 gave a complaint before P.W.11. The same was registered in Crime No.461 of 2017, for the offences under Sections 294(b) and 323 of



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IPC r/w Section 3(1)(r), 3(1)(s) & 3(2)(va) of the Scheduled Caste and Scheduled Tribes, Act, 1989, (hereinafter, for the sake of brevity, referred to as “SC/ST Act”). Thereafter, P.W.12 conducted the investigation and filed the final report. The same was taken on file in S.C.No.32 of 2018, by the learned Principal Sessions Judge, Karur.

3.On appearance of the appellant, copies of documents relied by the prosecution were furnished to the accused under section 207 of Cr.P.C. Then, he framed the necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

4.To prove the case, the prosecution examined P.W.1 to P.W.12 and exhibited 12 documents as Ex.P.1 to Ex.P.12. Thereafter, the appellant was questioned under Section 313 Cr.P.C proceedings after disclosing the incriminating evidence against him and he denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witnesses on his side.



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5. After considering the material adduced by the prosecution and also hearing the argument of the appellant, the learned trial Judge has passed the impugned order, dated 10.02.2020, and found him guilty, convicted and sentenced him as detailed below and also acquitted him from the charges under Sections 3(1)(r) and 3(1)(s) of SC/ST (POA) Act:-

Accused	Convicted under Section	Sentence of Imprisonment/ fine imposed
Sole accused	U/s 294(b) of IPC	to pay a fine of Rs.1000/-, in default to undergo Simple Imprisonment for one month.
	U/s 323 of IPC r/w Section 3(2)(va) of SC/ST Act, 1989	to pay a fine of Rs.1000/- in default to undergo simple Imprisonment for one month.

6. Challenging the above said conviction and sentence, the appellant has preferred the present Criminal Appeal.

7.1. The learned counsel for the appellant would submit that the deposition of P.W.1 that the appellant scolded him by using his caste name is false. The appellant has no knowledge about the caste of P.W.1. But,



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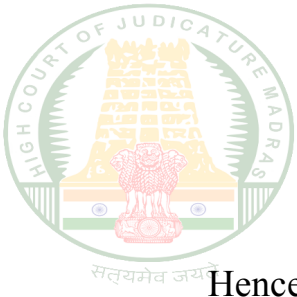
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without any evidence, the learned trial Judge has given a finding that the appellant has knowledge about the caste of P.W.1 which is not sustainable. Hence, he seeks to allow this appeal.

7.2. He would further submit that no independent witnesses have been examined to prove the allegation against the appellant that the appellant scolded P.W.1 by abusing his caste name and the same is not established beyond reasonable doubt. Further, the above allegation is without any evidence of corroborative nature.

7.3. He would further submit that there was no external injuries on the body of P.W.1 and the learned trial Judge acquitted the appellant under Section 323 of IPC and erroneously convicted the appellant under Section 323 of IPC r/w 3(2)(va) of SC/ST (POA) Act.

8. The learned counsel for the defacto complainant would submit that the accused and the defacto complainant belong to the same village. Hence, the appellant must be having knowledge about the caste of P.W.1.



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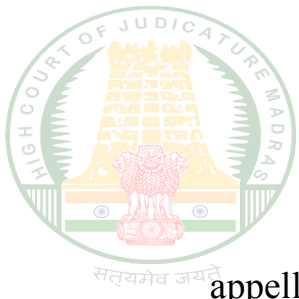
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Hence, the learned trial judge has rightly given a finding that the appellant has knowledge about the caste of P.W.1. Hence, no interference is required in the order passed by the learned trial Judge.

9. The learned Government Advocate (Crl.Side) would submit that the evidence of P.W.1 and P.W.2 are cogent and trustworthy. Nothing was elicited to disbelieve their evidence.

10. This Court considered the rival submission and also perused the records and the impugned judgment and the precedents relied upon by the appellant.

11. The learned trial Judge framed the following charges on the basis of the following material allegation that on 02.11.2017, when P.W.1 was standing near the water tank, the appellant and his wife, who came on a two wheeler scolded P.W.1 abusing his caste name with specific allegation that, “ஏண்டா சக்கிலி புண்டமவனே எதுக்குடா ரோட்டுல மலம் கழிக்கிறீங்க, தேவடியா பயலுகளா” and the same was condemned by P.W.1. Thereafter, the

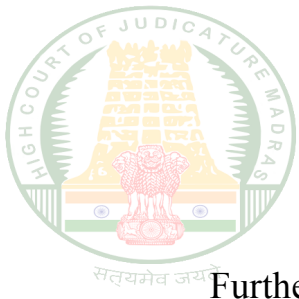


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appellant's wife/A2 in S.C.No.32 of 2018 caught-hold P.W.1 and the appellant is said to have assaulted P.W.1 by kicking and therefore, the charges were framed against the appellant under Sections 294(b) and 323 of IPC r/w Section 3(1)(r), 3(1)(s) & 3(2)(va) of the Scheduled Caste and Scheduled Tribes, (POA) Act, 1989, and the trial Court convicted the appellant for the offence under Sections 294(b) and 323 r/w Section 3(2)(va) of the SC/ST (POA) Act, and imposed to pay a fine of Rs.1,000/-, in default to undergo 1 month Simple Imprisonment for the offence under Section 294 (b) of IPC and sentenced him to undergo 1 year Rigorous Imprisonment and to pay of a fine of Rs.1,000/- in default to undergo 1 month simple imprisonment for the offence under Section 323 r/w Section 3(2)(va) of the SC/ST (POA) Act. The learned trial Judge convicted the appellant for the offence under Section 323 of IPC r/w 3(2)(va) of the SC/ST (POA) Act to undergo 1 year Rigorous Imprisonment and also imposed fine of Rs.1,000/- with default sentence of 1 year Simple Imprisonment which is legally not correct. There was no charge for the offence under Section 323 of IPC r/w 3(2)(va) of the SC/ST (POA) Act.

“Therefore, without any charge, the conviction is not legally sustainable”.



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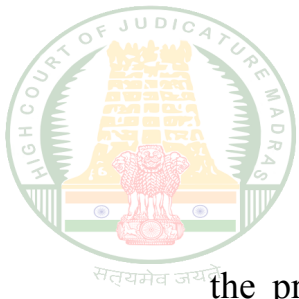
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Further, the learned trial Judge acquitted the appellant for the offence under Section 3(1)(r) and 3(1)(s) of SC/ST (POA) Act. In the said circumstance, the conviction under Section 3(2)(va) of the SC/ST (POA) Act, is not legally maintainable and the language of Section 3(2)(va) of the SC/ST (POA) Act, is as follows:-

“Section 3(2)(va) in The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:-

Section 3(2)(va)-commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;”

12. The learned trial Judge without any evidence gave a finding that the appellant had knowledge about the caste of P.W.1 and P.W.2. The said finding is without any evidence. From reading the evidence of P.W.1 and P.W.2, nothing is available either to infer or presume that the accused had knowledge about the caste of P.W.1 & P.W.2. The Section demands that



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the prosecution must establish the fact that the appellant has knowledge about the caste of P.W.1. Here, this Court finds no material to prove that the appellant after knowing the community of P.W.1, committed the offence punishable under Section 294 (b) of IPC.

13. The Hon'ble Supreme Court in the case of Prabhat Kumar Mishra v.

State of U.P., reported in (2024) 3 SCC 665 has held as follows:-

“15. At the outset, we may take note of the fact that the prosecution of the appellant herein for the offence under Section 3(2)(v) of the SC/ST Act is ex facie illegal and unwarranted because it is nowhere the case of the prosecution in the entire charge-sheet that the offence under IPC was committed by the appellant upon the deceased on the basis of his caste.

16. This Court in Masumsha Hasanasha Musalman v. State of Maharashtra [Masumsha Hasanasha Musalman v. State of Maharashtra, (2000) 3 SCC 557 : 2000 SCC (Cri) 722] considered this issue and held as under : (SCC p. 561, para 9)

“9. Section 3(2)(v) of the Act provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,



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commits any offence under the Penal Code, 1860 punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. In the present case, there is no evidence at all to the effect that the appellant committed the offence alleged against him on the ground that the deceased is a member of a Scheduled Caste or a Scheduled Tribe. To attract the provisions of Section 3(2)(v) of the Act, the sine qua non is that the victim should be a person who belongs to a Scheduled Caste or a Scheduled Tribe and that the offence under the Penal Code, 1860 is committed against him on the basis that such a person belongs to a Scheduled Caste or a Scheduled Tribe. In the absence of such ingredients, no offence under Section 3(2)(v) of the Act arises. In that view of the matter, we think, both the trial court and the High Court missed the essence of this aspect. In these circumstances, the conviction under the aforesaid provision by the trial court as well as by the High Court ought to be set aside.”

14. From the reading of the Hon'ble Supreme Court judgment, the considered opinion of this Court is that the offence under Section 3(2)(va) of the SC/ST (POA) Act, is not made out and hence, the conviction and



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sentence imposed against the appellant under Section 323 r/w 3(2)(va) of the SC/ST (POA) Act is legally not correct. The offence under Section 294 of IPC for which the appellant is directed to pay a fine of Rs.1,000/- is also not maintainable for the following reasons:-

i) The learned trial Judge disbelieved the evidence of P.W.1 on the aspect that the appellant's wife namely, A2 caught-hold P.W.1 and the appellant assaulted him with his hands. When the evidence of P.W.1 that he was caught-hold by the wife of the appellant is disbelieved and the said evidence is not separable from the remaining part of the offence, the learned trial Judge committed error in segregating the evidence, which is intrinsically inseparable one. It is settled principle that when the evidence of the witness is intrinsically inseparable one, the Court has to reject the evidence wholly. In this case, the learned trial Judge committed error.

15. In view of that, the finding of the learned trial Judge that the appellant scolded P.W.1 and hence, he is liable to be convicted under Section 294(b) of IPC is also erroneous and hence, this Court is inclined to set aside the said conviction and sentence passed under Section 294(b) of IPC also.



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16. Accordingly, the appeal is **allowed** and the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Karur, in S.C.No.32 of 2018, dated 10.02.2020, is hereby set aside. Bail bond if any executed by the appellant, shall be cancelled. Fine amount if any paid by the appellant, shall be refunded forthwith.

15.05.2025

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
dss

To:

- 1.The Principal Sessions Judge,
Karur.
- 2.The Deputy Superintendent of Police,
Karur Rural Division, Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.

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