



Crl.A.(MD).No.539 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.12.2024

Pronounced on : 07.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD).No.539 of 2018

Ponmani

... Appellant/Sole Accused

Vs.

The Deputy Superintendent of Police,
Manamadurai,
Poovanthi Police Station.
(In Crime No.57 of 2012)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment of the learned Sessions Judge, SC/ST Act Court, Sivagangai, in S.C.No.4 of 2013 dated 16.11.2018, and acquit the appellant/accused herein from the charges of the above case.

For Appellant : Mr.C.M.Arumugam
for Mr.M.Saranchandar

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

: Mr.G.Bhagavath Singh
(for defacto complainant)



Crl.A.(MD).No.539 of 2018

WEB COPY

JUDGMENT

The appellant, who is the sole accused in S.C.No.4 of 2013, on the file of the learned Sessions Judge, SC/ST Act Court, Sivagangai, has filed this appeal challenging the conviction and sentence imposed on him, in S.C.No.4 of 2013, dated 16.11.2018, by the learned Sessions Judge, SC/ST Act Court, Sivagangai, and acquit the appellant.

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

2.1. Due to some civil dispute between the appellant and the defacto complainant, on 18.04.2012, at 04.00 p.m., while the defacto complainant was cutting wood in her own land, the appellant is said to have abused her by using her caste name and also threatened her with dire consequences. Based on which, the defacto complainant gave a complaint before P.W.5. The same was registered in Crime No.57 of 2012, for the offences under Sections 294(b) and 506(ii) of IPC and Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes, Act, 1989 (hereinafter, for the sake of brevity, referred to as “SC/ST Act”). Thereafter, P.W.10 conducted the investigation and filed the final report. The same was taken on the file in P.R.C.No.8 of 2004 by the learned Judicial Magistrate-2, Sivagangai.



CrI.A.(MD).No.539 of 2018

WEB COPY

2.2. On appearance of the appellant, copies of documents relied by the prosecution were furnished to the accused under section 207 of Cr.P.C. The learned Judicial Magistrate-2, Sivagangai, found that the offence under Section 3(1)(x) of SC/ST Act, is triable only by the Sessions Court and committed the case under Section 209(A) of Cr.P.C., to the learned District and Sessions Court, Sivagangai. Thereafter, the case was taken on file in S.C.No.4 of 2013. Then, he framed necessary charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

2.3.To prove the case, the prosecution examined P.W.1 to P.W.10 and exhibited 7 documents as Ex.P.1 to Ex.P.7. Thereafter, the appellant was questioned under Section 313 Cr.P.C proceedings after reading the incriminating evidence against him and he denied the same as false and thereafter, the case was posted for examination of defence evidence. The accused neither produced any documents nor examined any witnesses on his side.



WEB COPY

2.4. After considering the material adduced by the prosecution and also hearing the argument of the appellant, the learned trial Judge passed the impugned judgment, dated 16.11.2018 and found the appellant guilty, and convicted and sentenced him as detailed below:-

Accused	Convicted under Section	Sentence of Imprisonment/ fine imposed
Sole Accused	294(b) of IPC	Rigorous Imprisonment for three months.
	506(i) of IPC	Rigorous Imprisonment for six months.
	3(1)(x) of SC/ST (POA), Act, 1989,	Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for one month.

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

4.1. The learned counsel for the appellant submitted that P.W.1 made a false complaint against him as there was civil dispute between them relating to enjoyment of the property. P.W.1 also got a decree against the



Crl.A.(MD).No.539 of 2018

WEB COPY

appellant. Further, the appeal is pending against the decree and hence, this case was filed with the false allegations as if the appellant had scolded her by using her caste name. The said allegation of scolding with the caste name is the handiwork of the brother-in-law of P.W.1, who is a practicing Advocate. After the occurrence, she confabulated the said advocate and hence, the version of P.W.1 is unbelievable one.

4.2. He further submitted that P.W.2 also is the relative of P.W.1 and his evidence is not corroborated by the deposition of P.W.1. P.W.3 came to the occurrence place only after the occurrence. Therefore, without any corroborating evidence and also without satisfying the ingredients of 294(b), 506(i) of IPC and 3(1)(x) of SC/ST (POA), Act, 1989, the learned trial Judge erroneously convicted the appellant.

4.3. He further submitted that the other witness P.W.4, who was examined on the side of the prosecution clearly deposed that the appellant never scolded P.W.1 by using her caste name. Further, the occurrence took place on 18.04.2012 at 04.00 p.m. The complaint was preferred by the



Crl.A.(MD).No.539 of 2018

WEB COPY

Advocate namely, P.W.2, who is the brother-in-law of P.W.1 and the same was also admitted by P.W.1. Therefore, the circumstances show that a false complaint was made. But, the learned trial Judge failed to consider the same and convicted the accused. There was no corroboration for the evidence of P.W.1 and P.W.2 regarding the scolding at the time of the occurrence. Hence, the learned counsel prayed to allow this appeal by setting aside the conviction and sentence passed by the learned trial Judge.

5.1. The learned counsel for the defacto complainant submitted that even as per the evidence of P.W.1, the brothers of the appellant took him away from the place of occurrence. Hence, the public view is established in this case. Therefore, the judgments relied upon by the learned counsel for the appellant is not applicable to the present case.

5.2. He further submitted that P.W.1 clearly deposed about the abuse made by the appellant by using her caste name and hence, her evidence is cogent and the conviction and sentence passed by the learned trial Judge is in accordance with law.



Crl.A.(MD).No.539 of 2018

WEB COPY

5.3. He also submitted that in the civil suit, P.W.1 obtained a decree in her favour and the same was questioned by the appellant. Even after the decree in favour of P.W.1, the appellant is said to have abused her by using her caste name. Therefore, the motive for the occurrence is clearly established by the prosecution. Therefore, he prayed for dismissal of the appeal by confirming the conviction and sentence passed by the learned trial Judge.

6. The learned Additional Public Prosecutor on instructions, and also upon perusal of the records, reiterated the submissions of the learned counsel for the defacto complainant that when the evidence of P.W.1 is cogent, this Court has no jurisdiction to interfere with the finding of the learned trial Judge in believing the evidence of P.W.1. He also further submitted that merely because the brother-in-law of P.W.1 is an Advocate and he only wrote the complaint that is not a ground to disbelieve the evidence of P.W.1 and P.W.2. Therefore, he also seeks to confirm the conviction and sentence imposed against the appellant.



Crl.A.(MD).No.539 of 2018

WEB COPY

7. This Court perused the judgment and the documents adduced by the prosecution and the grounds raised by the appellant and heard the submissions made by the learned counsel for the defacto complainant and also the reply made by the learned Additional Public Prosecutor.

8. The question arising for consideration in this appeal is *whether the Court below is correct in convicting the appellant under Sections 294(b), 506(i) of IPC and 3(1)(x) of SC/ST (POA) Act, 1989, in S.C.No.4 of 2013?*

9.1. To convict the appellant under Section 3(1)(X) of the SC/ST Act, the prosecution shall prove that the appellant scolded P.W.1 in public view. According to the judgment of the Hon'ble Supreme Court in the case of ***Swaran Singh and Others Vs. State Through Sanding Counsel and Another*** reported in ***2008 8 SCC 435***', the *public view*' is as follows:-

“Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view.”



Crl.A.(MD).No.539 of 2018

WEB COPY

9.2. The above said ratio, laid down by the Hon'ble two Judges Bench of the Hon'ble Supreme Court of India was confirmed by the Hon'ble three Judges Bench of the Hon'ble Supreme Court of India in the case of ***Hitesh Verma Vs. State of Uttarakhand And Another*** reported in (2020) 10 SCC 710. The relevant portion of the above said judgment is as follows:-

“what is to be regarded as “place in Public view” had come up for consideration before this Court in the judgment reported as Swaran Singh V. State. The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view(sic).”

9.3. The same has been reiterated in the case of ***Priti Agarwally and Others Vs. State of GNCT of Delhi and Others*** reported in 2024 SCC



OnLine SC 973 and the learned Judge of this Court in Crl.A.234 of 2011 dated 02.08.2024 considered the entire case law and has held as follows:-

Para No.33	Para No.30
<i>it is implicitly clear that the expression “within public view” should be construed to mean that the insult or humiliation must take place in the presence of or in the proximity of atleast one independent person</i>	<i>From the above ratio laid down by the Apex Court, it is manifest that it is not the place which has significance in the term “in any place within public view” and what is more material therein is “within public view”, which literally means that in the said place, excluding relatives or friends, there should be presence of other persons, who are independent of the occasion and who could be termed to be public who could witness the happenings in the said place</i>

9.4. In this case, P.W.1 deposed that on 18.04.2012 at 04.00 p.m, while she was cutting wood in her land, the appellant abused her by using her caste name in the presence of the P.W.2 & P.W.4. P.W.2 & P.W.4 are the relative of P.W.1 and they belong to the same community. No independent witnesses, other than the relatives of P.W.1 have been examined to prove the



Crl.A.(MD).No.539 of 2018

WEB COPY

allegation against the appellant that he scolded P.W.1 by calling her caste name in public view. P.W.4 never deposed that the appellant scolded P.W.1 by using her caste name. There was inconsistency between the evidence of P.W.1, P.W.2 about the presence of the brother of the appellant. Hence, the prosecution failed to establish beyond reasonable doubt that the appellant scolded P.W.1 by calling her caste name in public view. Therefore, this Court holds that the offence under Section 3(1)(X) of the SC/ST Act, is not made out against the appellant.

10. There was a land dispute between P.W.1 and the appellant. P.W.1 has obtained a decree against the appellant. Hence, the appellant has preferred an appeal against the said decree. According to P.W.1, the occurrence took place on 18.04.2012 at 04.00 p.m. But, the complaint was given only at 07.30 p.m. P.W.1 also admitted that she made the complaint only after consulting her brother-in-law. Therefore, the submission of the learned counsel for the appellant that P.W.1 made the false complaint after deliberation with her brother-in-law, who is the practicing Advocate with delay, deserves to be accepted.



Crl.A.(MD).No.539 of 2018

WEB COPY

11. It is the case of the prosecution that the appellant was under the influence of alcohol and scolded P.W.1 using her caste name. However, no evidence is adduced to prove that the appellant was under the influence of alcohol. Therefore, the evidence of P.W.1, P.W.2 & P.W.4 are not trustworthy and credible one.

12. The submission of the learned counsel for the defacto complainant that presence of the brothers of the appellant in the occurrence place at the time of scolding by the appellant amounts to proof of '*public view*' cannot be accepted for the reason that the presence of the brothers of the appellant has not been proved through the evidence of P.W.2. P.W.2 never deposed about the presence of the brothers of the appellant. The Advocate, who had written the complaint, being the brother-in-law of P.W.1, gave a false case against the appellant and the said case was the handiwork of the above said Advocate. In the said circumstances, this Court comes to the conclusion that the complaint was lodged with a false allegation as if the appellant scolded P.W.1 by using her caste name.



Crl.A.(MD).No.539 of 2018

WEB COPY

13. It is the specific case of the prosecution that the appellant was under the influence of alcohol. But, no evidence was produced to prove that he was in under the influence of alcohol at the time of occurrence.

14.1. The offence under Section 506(i) is concerned, a judgment of the Hon'ble Supreme Court, in the case of **Dr.Subramanian Swamy Vs. C.Pushparaj** reported in **1998 SCC Online Mad 67**, has held as follows:-

“An insult even if gross one is not an offence in itself under Section 504, IPC. Part II of Sec. 506, IPC is attracted if the criminal intimidation includes threat to cause death or grievous hurt. Mere outburst is not sufficient to hold that it would fall within the mischief of Sec. 506, IPC. In the instant case, the averment in the complaint and the statements in the depositions, if taken together, there are no allegations in the whole complaint that the petitioner ever made any attempt or did any act in pursuance of his alleged expression. So also, the actual words used or supposed to have been used by the petitioner is not stated either in the complaint or in the depositions. Regarding criminal intimidation to whom it was intended, whether alarm was caused, if so, what are the actual words employed are not stated either in the



WEB COPY



Crl.A.(MD).No.539 of 2018

complaint or in the depositions. In the absence of these averments touching the ingredients, mere mentioning of sections and putting a person to face the trial is nothing but the abuse of the process of the Court.”

14.12. As per the law laid down by the Hon'ble Supreme Court in the case of ***Parminder Kaur v. State of Punjab***, reported in **(2020) 8 SCC 811**, assault should have been made, which was the material ingredient of Section 506 (i) of IPC. The Hon'ble Supreme Court in the case of ***Manik Taneja and another Vs. State of Karnataka and another*** reported in **2015 [7] SCC 423**, has held as follows:-

“Threat must be intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expressions of any words, without any intention to cause alarm would not be sufficient to bring in the application of this Section.”

14.3. A judgement in the case of ***Noble Mohandass Vs. State***, reported in **1988 [2] MWN Crl 184**, has held as follows:

“Threat should be a real one and not just a mere



WEB COPY



Crl.A.(MD).No.539 of 2018

word when the person uttering it does exactly mean what he says and also when the person at whom thereat is launched does not feel threatened actually.”

14.4. By applying the above principles, this Court finds no ingredients to constitute the offence under Section 506(i) of IPC.

15. On going through the evidence of the witnesses, P.W.1 and P.W.2, the said evidence did not satisfy the ingredients of the offences under Section 294(b) of IPC.

15.1. In so far as the offence under Section 294(b) of IPC is concerned, a judgement in the case of ***K.Jeyaramanuju Vs. Janakaraj & anr.***, reported in ***1996(1) CTC 470***, has held as follows:-

"To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case”.



Crl.A.(MD).No.539 of 2018

WEB COPY

15.2. Uttering of obscene words which have not caused annoyance will not make out, the offence under Section 294(b) IPC. The Hon'ble Supreme Court of India in the case of ***N.S.Madhanagopal and another Vs. K.Lalitha (2022 LiveLaw(SC) 844)***, has held as follows:

““Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 (b) of IPC is made out”.

15.3. Considering the overall facts and circumstances of the case, this Court is of the considered view that no ingredients are found to make out the case for the offences under sections 294(b) and 506(i) of IPC. Hence, this court is inclined to set aside the conviction and sentence imposed against the appellant.



Crl.A.(MD).No.539 of 2018

WEB COPY

this appeal.

16. Considering the above aspects, this Court is inclined to allow

17. Accordingly, the appeal is allowed in the following terms:

8.1.The judgment passed by the learned Sessions Judge, SC/ST Act Court, Sivagangai, in S.C.No.4 of 2013 dated 16.11.2018,, is set aside.

8.2.The appellant is acquitted from all the charges in S.C.No.4 of 2013 on the file of the learned Sessions Judge, SC/ST Act Court, Sivagangai.

8.3.Fine amount paid by the appellant shall be refunded to the appellant forthwith.

8.4.Bail bond executed by the appellant shall stand cancelled.

07.04.2025

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



WEB COPY



Crl.A.(MD).No.539 of 2018

K.K.RAMAKRISHNAN, J.

dss

To:

- 1.The Sessions Judge,
SC/ST Act Court, Sivagangai.
- 2.The Deputy Superintendent of Police,
Manamadurai, Poovanthi Police Station.
- 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.

Crl.A.(MD).No.539 of 2018

07.04.2025