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CRL.A.NO.812 OF 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 28 / 08 / 2023

JUDGMENT PRONOUNCED ON: 28 / 02 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.812 OF 2016

1.Ganesan
2.Raji @ Rajesh
3.Kannan
4.Kalaivannan

... Appellants /
Accused 1-4

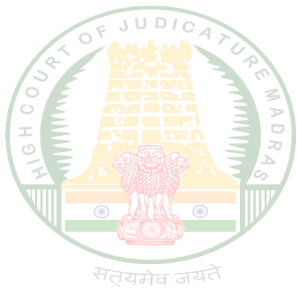
Versus

The State Represented by
The Deputy Superintendent of Police
Office of the DSP
Gingee, Villupuram.

... Respondent /
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to call for the records and set aside the judgment of conviction passed by the learned Sessions Judge in Special Court for Exclusive Trial of Cases registered under the SC / ST (POA) Act, 1989, at Villupuram in Special Sessions Case No.258 of 2015 dated November 17th, 2016.

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For Appellants : Mr.R.Thirumoorthy
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

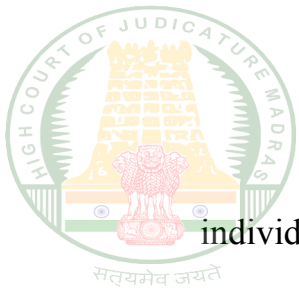
J U D G M E N T

This Criminal Appeal is preferred by the appellants assailing the judgment dated November 17th, 2016 passed by the 'learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram' (henceforth 'Trial Court' for the sake of brevity) in Special Sessions Case No.258 of 2015, in which, they were convicted and sentenced as follows:



Appellant's Rank	Provision under which convicted	Sentence
A1	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	323 (3 counts) of IPC	Simple Imprisonment for THREE MONTHS for each count with a fine of Rs.1,000/- (Rupees One Thousand Only) for each count, in default thereof, to under Simple Imprisonment for 22 DAYS for each count
A2	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	323 (3 counts) of IPC	Simple Imprisonment for THREE MONTHS for each count with a fine of Rs.1,000/- (Rupees One Thousand Only) for each count, in default thereof, to under Simple Imprisonment for 22 DAYS for each count
A3	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	323 (3 counts) of IPC	Simple Imprisonment for THREE MONTHS for each count with a fine of Rs.1,000/- (Rupees One Thousand Only) for each count, in default thereof, to under Simple Imprisonment for 22 DAYS for each count
A4	3(1)(x) of SC/ST (POA) Act 1989	Simple Imprisonment for ONE YEAR with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for THREE MONTHS
	323 (3 counts) of IPC	Simple Imprisonment for THREE MONTHS for each count with a fine of Rs.1,000/- (Rupees One Thousand Only) for each count, in default thereof, to under Simple Imprisonment for 22 DAYS for each count
	326 of IPC	Simple Imprisonment for TWO YEARS with a fine of Rs.5,000/- (Rupees Five Thousand Only), in default thereof, to undergo Simple Imprisonment for SIX MONTHS
		The period of imprisonment already undergone by the accused, if any, was given set off under Section 428 of Cr.P.C. The period of imprisonment was ordered to run concurrently.

2.For the sake of convenience, henceforth the appellants will be



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individually referred to as 'A1, A2, A3 and A4' respectively and collectively referred to as the 'accused'.

3.The case of the prosecution, in brief, is as follows:

3.1.Mariyappan (P.W.1) was running a Tailor Shop in the name of 'New Sun Tailor' at Balaji Textile complex in Kadaiveethi, Anandhapuram. On November 12th, 2012 at 22.00 hours, the accused verbally abused P.W.1 by uttering the words 'XXX' [*'XXX' masked for legal and ethical reasons*]. Questioning Mariyappan (P.W.1) as to why he opened the Tailor Shop on the eve of Deepavali. Further, A2 abused P.W.1 by using caste name and filthy language and asked P.W.1 to flee away as they were going to consume liquor. Further, the accused caught hold of Mariyappan's (P.W.1) shirt and dragged him out of the tailoring shop and assaulted Mariyappan (P.W.1). Further, A1 struck the mouth of Subramanian (P.W.2) who was working in the tailoring shop with stone. The A2 to A4 knocked Subramanian (P.W.2) down and assaulted him by using hands and legs. When Mariyappan (P.W.1) intervened to stop the accused, they assaulted Mariyappan (P.W.1) in the cheek. When

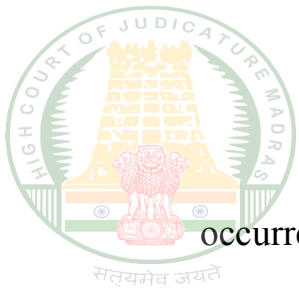


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Saravanan (P.W.3) came there and attempted to dissuade the accused, they yelled at Saravanan (P.W.3) using the words 'XXX' [*'XXX' masked for legal and ethical reasons*]. Murugan (P.W.4) tried to intervene to prevent the incident, but A4 assaulted him, causing grievous injuries to his nose and head with stone. Therefore, Mariyappan (P.W.1) lodged a complaint (Ex-P.1) before the Ananthapuram Police Station on November 16th, 2012.

3.2. On receipt of the complaint, P.W.10 B.Renukadevi, Sub-Inspector of Police, Ananthapuram Police Station registered FIR (Ex-P.6) under Sections 294(b), 323, 324, 506(ii) of 'The Indian Penal Code, 1860' ('IPC' for short) read with Section 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST (POA) Act' for short) against A1 to A4.

3.3. The Superintendent of Police, Villupuram District, vide his proceedings dated November 16th, 2012 (Ex-P.8) nominated Mr.G.Paneerselvam, Deputy Superintendent of Police (P.W.12) as the Investigating Officer. The Investigation Officer inspected the place of



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occurrence on November 17th, 2012 in the presence of witnesses namely Velu (P.W.9) and Raji (P.W.5) and prepared observation mahazar (Ex-P.2) and rough sketch (Ex-P.9). After investigation, he recorded statements of Mariyappan (P.W.1), Subramani (P.W.2), Saravanan (P.W.3), Murugan (P.W.4), Velu (P.W.9) and Raji (P.W.5). On the same day viz., November 17th, 2016, at 10.00 a.m., upon receiving information that A1 and A2 were hiding in the vicinity of Panamalaipettai Bus Stop, he went there and arrested A1 and A2 and produced them before the Judicial Magistrate, Gingee. To find out the community of the victims, he addressed a requisition letter to the Tahsildar, Gingee. On November 18th, 2012, he recorded the statement of Renukadevi (P.W.10). On December 28th, 2012, he recorded the statement of Doctor Bhaskaran (P.W.11) who treated Murugan (P.W.4). On March 2nd, 2013 he recorded the statement of Doctor Chandrasekar (P.W.7) who treated Subramanian (P.W.2). On June 2nd, 2013, he recorded the statement of Punniyakotti (P.W.6) Tahsildar, Gingee and obtained community certificate (Ex-P.3) from him with respect to P.W.1 to P.W.4. Since he was transferred, he handed over the case file to the office.

3.4.Muralidharan (P.W.13) the then Deputy Superintendent of

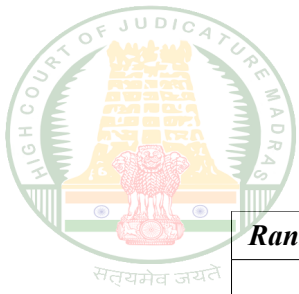


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Police, Gingee, took on the case for further investigation. He examined R.Ravikannan (P.W.8), Tahsildar of Vikravandi with respect to the community of A1 to A4. After completion of the investigation, he filed charge sheet under Sections 294(b), 323, 326 and 506(ii) of IPC read with 3(1)(r), 3(1)(s) and 3(2)(va) of SC / ST (POA) Ordinance 2014 against the accused on June 25th, 2014.

3.5.The learned Judicial Magistrate, Gingee registered the case in P.R.C.No.3 of 2015 and observing that the offence under Sections 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Ordinance, 2014 are exclusively triable by the designated Special Court under SC/ST (POA) Act, 1989, committed the case to the Trial Court, after furnishing copies under Section 207 of 'The Code of Criminal Procedure, 1973' [henceforth 'Cr.P.C.' for the sake of brevity] to the accused.

3.6.The Trial Court after perusing the records and hearing both sides, framed charges against the accused as follows:



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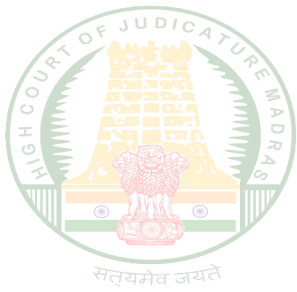
Rank of the accused	Charges framed
A1	3(1)(x) of SC/ST (POA) Act, 323 of IPC (3 counts)
A2	3(1)(x) of SC/ST (POA) Act, 323 of IPC (3 counts)
A3	3(1)(x) of SC/ST (POA) Act, 323 of IPC (3 counts)
A4	3(1)(x) of SC/ST (POA) Act, 323 (3 counts) and 326 of IPC

3.7.The charges were read over and explained to all the accused.

Since the accused pleaded not guilty, Trial was ordered.

3.8.To prove its case, the prosecution examined P.W.1 to P.W.13 (Witnesses) and marked Ex-P.1 to Ex-P.9 (Documents). The defence side neither examined any witnesses nor marked any documents. No Material Objects were marked by either side. The incriminating evidence against the accused available on record were put forth in the form of questions to the accused under Section 313 of Cr.P.C., and the accused denied the same as false.

3.9.The Trial Court after hearing either side, concluded that the charges against A1 to A4 are proved and convicted and sentenced as stated *supra* in paragraph no.(1).



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3.10. Feeling aggrieved with the conviction recorded and the sentence imposed by the Trial Court, the accused have preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

Arguments

4. The learned counsel for the accused argued that the accused did not commit any offence as alleged; that the accused did not insult or intimidate witnesses; that there are vital contradiction in the evidence of P.W.1 and P.W.4; that the Trial Court has not considered and appreciated the contradictory statement of prosecution witness. Further he submitted that the FIR has been registered after four days from the date of alleged occurrence. Further he submitted that there is a delay in sending FIR to Court. Further he submitted that the prosecution has projected two different place of occurrence. Further he submitted that P.W.3 and P.W.4 not belong to Scheduled Caste; that except P.W.1 to P.W.4, no independent witness was examined to prove the alleged charges. Further he submitted that Rule 7 of SC/ST (POA) Rules 1995 is mandatory in nature and the said Rule has not

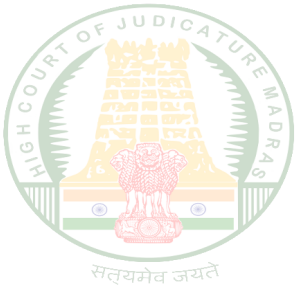


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been adhered to, the investigation for the alleged offence under Section 3(1)(x) of SC/ST (POA) Act is vitiated. Further he submitted that no material object as alleged in the prosecution case has been seized / recorded by the Investigating Officer. In sum and substance, his argument is that the accused did not involve and commit any offence as alleged by the prosecution and the prosecution case is doubtful; and that the Trial Court without considering the evidence in proper perspective, recorded conviction and imposed punishment which is to be set aside.

5.Per contra, learned Additional Public Prosecutor has submitted that P.W.1 to P.W.4 are injured witnesses and medical evidence corroborates the injury sustained by them. Further he submitted that there is no necessity for P.W.1 to make false complaint against the accused. The evidence of P.W.1 to P.W.4 is natural and believable. The Trial Court after considering the evidence passed the judgment. Accordingly, he prayed to dismiss the appeal and sustain the conviction and sentence of the Trial Court.



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6.This Court has heard either side and perused the case file. The following points arise for consideration.

(i)Whether the charge under Section 323 (3 counts) is proved against the accused?

(ii)Whether the charge under Section 326 of IPC is proved against A4?

(iii)Whether the charge under Section 3(1)(x) of SC/ST (POA) Act are proved against the accused?

Discussion and Decision for Point Nos.(i) and (ii)

7.Mariyappan (P.W.1) in his evidence has deposed that on November 12th, 2012, on the eve of Deepavali, he opened his Tailorshop and engaged in his job; that at that time, all the accused were standing in front of P.W.1's Tailoring shop; that P.W.1 asked the accused to move to some place as his customer would come to his Tailor Shop; that the accused verbally abused by calling P.W.1's caste name; that the accused assaulted P.W.1. He further deposed that Subramanian (P.W.2) who was working in his shop tried to

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prevent the accused; that A1 struck the mouth of Subramanian (P.W.2); that A2 assaulted Subramanian (P.W.2); that Saravanan (P.W.3) who is running cycle shop opposite to P.W.1's shop came there and tried to dissuade the accused; that the accused yelled at Saravanan (P.W.3) by using 'பறப்பயலுக்கு நீயும் சப்போட்டா'; that Murugan (P.W.4) who is the brother of Saravanan came there and tried to intervene, to prevent the incident but Kalaivanan (A4) assaulted Murugan (P.W.4) and caused head injury; that someone phoned the police and police came to the place of occurrence; that on seeing the police, accused fled away from that place.

7.1.P.W.1 in his cross examination admitted that he lodged complaint after four days from the date of occurrence; that Anandhapuram Police Station situate 300 meter away from his Tailoring Shop; that Saravanan (P.W.3) and Murugan (P.W.4) belong to *Devankar* Community which is non-scheduled caste; that there is no previous enmity between him and accused before the incident.

8.Subramanian (P.W.2) in his evidence has deposed that he is



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working in the Tailoring Shop of P.W.1; that he sustained injuries in the said incident. He deposed in the line of P.W.1.

8.1.P.W.2 in his cross examination has deposed that except Ganesan (A1) he did not know any accused before the said occurrence; that the accused never visited P.W.1's Tailoring Shop and they did not acquaint with P.W.1 and P.W.2; that there is no previous enmity between the accused and them; that he was admitted to hospital as in-patient and took treatment for two days.

9.Saravanan (P.W.3) who is also an injured witness deposed that on November 12th, 2012, at 22.00 hours, he was in his house; that he owned a shop adjacent to his house; that the accused were quarrelling with the P.W.1; that he tried to prevent the offence; that at that time, the accused attacked him; that on seeing the incident, his brother Murugan (P.W.4) came to the place of occurrence and prevented the accused; that Kalaivannan (A4) attacked Murugan's (P.W.4) face and mouth.

9.1.In his cross examination, P.W.3 deposed that his shop is



situated opposite to P.W.1's shop and in between P.W.1's shop and his shop, there is a road; that his house is situated 100 feet from the place of occurrence.

10.Murugan (P.W.4) who is none other than the brother of P.W.3 deposed in the line of P.W.1 to P.W.3. He further deposed that when he prevented the accused, Kannan (A3) and Kalaivannan (A4), he was assaulted by A3 and A4 with stone on his head, mouth and nose; that due to the assault, blood oozed from his mouth; that he went unconscious; and that he was brought to hospital through 108 Ambulance.

10.1.In his cross examination, P.W.4 deposed that there is a road in between P.W.1's shop and his house.

11.Doctor Chandrasekar (P.W.7) has deposed that on November 13th, 2012 at about 12.30 p.m., when he was on duty in the Government Hospital, Gingee, Subramanian (P.W.2) came to hospital accompanying his relative Mariyappan (P.W.1); that Subramanian (P.W.2) informed him that



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four known persons assaulted him on November 12th, 2012 at 08.30 p.m., with

hands. The Doctor (P.W.7) noted the following injuries on P.W.2 in the

Accident Register:

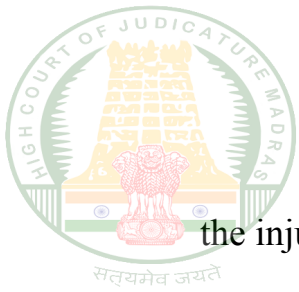
“1.Contusion 4 X 3 cm below right eye

2.Contusion 3X 3 cm – below right ear

3.Tooth ache”

11.1.Doctor Chandrasekar (P.W.7) further deposed that the said injuries are simple in nature. To that effect, he issued Ex-P.4 Accident Register. He further deposed that he referred Subramanian (P.W.2) for getting opinion from Ophthalmologist and Dentist; that P.W.1 did not take treatment and not produced any document regarding the said treatment; that since Subramanian (P.W.2) did not produce any medical records, he has not given any opinion about the nature of the injury.

12.The Investigating Officer has not explained whether Subramanian (P.W.2) received treatment from Ophthalmologist and Dentist. Evidence in this regard is totally absent. Hence, this Court is of the view that



the injuries noted in Ex-P.4 is simple in nature.

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13.Dr.Bhaskaran (P.W.11) deposed that on November 12th, 2012 at about 23.45 hours, when he was on duty at Emergency Ward at Government Hospital, Mundiampakkam, one Shanmugam took Murugan (P.W.4) to hospital through 108 Ambulance; that Murugan informed him that three known persons assaulted him with stone near his house at 22.45 hours. He noted the following injuries on the body of Murugan:

“(i)Laceration on the forehead mid 4 X 1 X ½ cm

(ii)Laceration on the upper lip 2X ½ X ½ cm

13.1.P.W.11 further deposed that he admitted Murugan (P.W.4) in the hospital as in-patient and Computed Tomography Scan (C.T. Scan) was done; that his nasal bone got fractured; that P.W.11 opined that the injuries are grievous in nature. In that effect, he issued Ex-P.7 Accident Register and final opinion.

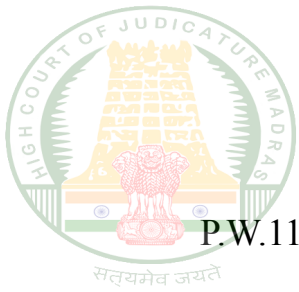
14.A conjoint reading of the evidences of P.W.1 to P.W.3 and



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P.W.11 and Ex-P.4 clearly establishes that the accused persons assaulted and caused simple injury to P.W.1 to P.W.3. Further, accused persons attacked P.W.4 also. Hence, the act of the accused clearly attracts the offence punishable under Section 323 of IPC. The Trial Court, after appreciating the evidence and medical records, has rightly decided that the offence under Section 323 of IPC has been made out and accordingly, imposed punishment in para 20(ii) of its judgment. This Court does not find any illegality or infirmity in the said finding. Hence, there is no warrant to interfere with the said finding. Accordingly, this Court holds that the Trial Court's conviction and sentence against accused under Section 323 of IPC (3 counts) is sustained.

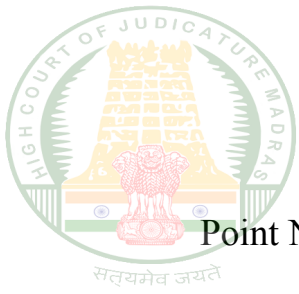
15.P.W.4 has deposed that A3 and A4 assaulted him and caused grievous injury. But, charge under Section 326 has been framed against A4 alone. This Court has carefully perused P.W.4's evidence along with medical evidence. Doctor (P.W.11) who gave treatment to P.W.4 has clearly deposed that P.W.4 got grievous injury, to that effect, the Doctor (P.W.11) issued Accident Register (Ex-P.7). A conjoint reading of evidence of P.W.4 and



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P.W.11 and Ex-P.7 clearly proves that A4 assaulted P.W.4 with stone and thereby caused grievous injury. Hence, the act of A4 clearly attracts the offence punishable under Section 326 of IPC. Therefore, the Trial Court after appreciating oral and documentary evidence has rightly decided that offence under Section 326 of IPC has been proved by the prosecution. Hence, there is no warrant to interfere with the said finding. However, the Trial Court has imposed two years of Simple Imprisonment and a fine of Rs.5,000/-, in default thereof, six months of Simple Imprisonment for the said offence.

16.P.W.4 was admitted in the hospital on November 12th, 2012 and discharged on November 19th, 2012. In view of the nature of the injury noted by the Doctor (P.W.11) in Ex-P.7 and the period of treatment underwent by P.W.4 and also considering the age of the accused (Age 24/2016) this Court is of the view that the sentence imposed by the Trial Court shall be modified. Therefore, this Court is of the considered view that imposing punishment of six months Simple Imprisonment and a fine of Rs.1,000/- in default thereof to undergo one month of Simple Imprisonment would be reasonable. To that extent, this Court interferes with the Trial Court's findings.



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Point Nos.(i) and (ii) are answered accordingly.

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Discussion and Decision to Point No.(iii)

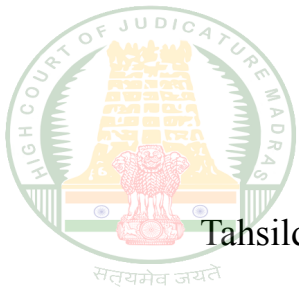
17.P.W.1 and P.W.2 belong to Scheduled Caste and P.W.3 and P.W.4 belong to non-scheduled caste.

18.The prosecution has examined Mr.Punniyakotti, Tahsildar (P.W.6). He deposed that P.W.1 and P.W.2 belong to Scheduled Caste and P.W.3, P.W.4 and accused belong to non-scheduled caste. In that effect, he issued Ex-P.3 report.

19.In view of the above evidence, the prosecution proved that P.W.1 and P.W.2 belong to Schedule Caste and P.W.3, P.W.4 and accused belong to non-schedule caste.

20.The defence side did not dispute the evidence of Tahsildar (P.W.6) and Ex-P.3.

21.Further, prosecution has examined one Mr.Ravikannan,



Tahsildar (P.W.8). He deposed that the accused belong to non-scheduled community. To that effect, he issued Ex-P.5 certificate.

22.The defence side did not dispute the evidence of Tahsildar (P.W.8) and Ex-P.5. Hence, the prosecution has proved that P.W.1 and P.W.2 belong to Scheduled Caste; P.W.3, P.W.4 and accused belong to non-scheduled community.

23.P.W.1 and P.W.2 have deposed that the accused uttered their caste name and also assaulted them. The prosecution has proved the place of occurrence. The Investigating Officer visited the place of occurrence and filed observation mahazar (Ex-P.2) and rough sketch (Ex-P.9). In the observation mahazar and rough sketch, it is clearly stated that the occurrence happened in a street (viz., public place). Though P.W.1 and P.W.2 deposed that the accused persons uttered their caste name, P.W.3 and P.W.4 who belong to non-scheduled community did not depose that the accused persons uttered caste name of P.W.1 and P.W.2.

24.To attract Section 3(1)(x) of SC/ST (POA) Act, the

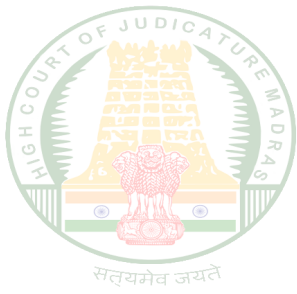


prosecution has to prove that the accused caused humiliation to the Scheduled Caste member in a public place and public view. Further, the prosecution has to prove the said fact through independent evidence.

25.In this case, P.W.3 and P.W.4 belong to non-scheduled caste but they did not depose that the accused uttered and abused P.W.1 and P.W.2 by saying their caste name.

26.This Court in ***MANIMEGALAI VS. STATE represented BY THE INSPECTOR OF POLICE, ADHIYAMANKOTTAI [2016 SCC ONLINE MAD 9896]*** has held as follows:

“39.The expression "public view" employed in Section 3(1)(x) of the SC/ST Act, came for consideration in a case before a Division Bench of the Delhi High Court. In the said case, the defacto complainant is a member of Scheduled Caste. He was staying in a flat along with his family. The accused were residing in the same flats. They were alleged to have called the defacto complainant and his wife by their caste. It was contended that the occurrence did not take place in public view as no public person was present. Justice V.S.Agarwal (as His Lordship then



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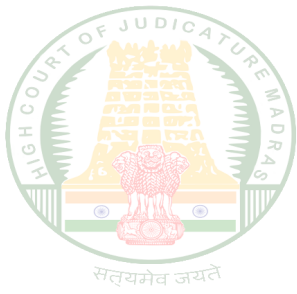
was) took the view that for the purpose of 'public view' employed in Section 3(1) (x) of SC/ST Act, it is not necessary that a huge crowd must present, it is enough two or more members of the public were present, heard and viewed, as four persons residing in the same flats viewed the occurrence, the occurrence had taken place in public view.

40.However, Justice B.A.Khan (as His Lordship then was) took the view that the persons who were present and viewed must be independent persons, it will not include his friends, Associates, neighbours and thus the residents of the same flats will not be independent persons, so the occurrence had not taken place in 'public view'.

41.The said tangle was referred to a third Judge, namely, Hon'ble Justice S.K.Agarwal [Daya Bhatnagar vs. State of Delhi {(2004 (109) DLT 915)}].

41.Hon'ble Justice S.K.Agarwal endorsed the view of Hon'ble Justice B.A.Khan and observed as under:

"19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(i) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause(x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an



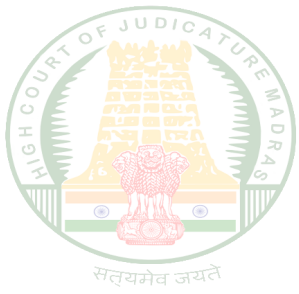
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essential ingredient for the offence of Insult', 'intimidation' and 'humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within 'public view'. Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression



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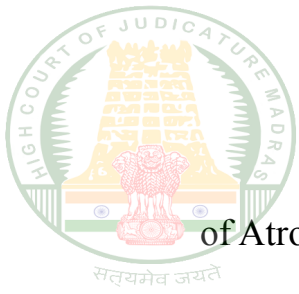
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used."

43. Thus from the language used in Section 3(1)(x) of the Act and the above survey of case-laws, it is very clear that for an offence under Section 3(1) 3(x) of SC&ST Act, at the time of occurrence, some independent members of the public should hear and view the utterances made by the accused towards a member of the Scheduled Caste/Scheduled Tribe Community."

27. Hence, the charge under Section 3(1)(x) of SC/ST (POA) Act has not been satisfactorily proved. Further, in this case, the Deputy Superintendent of Police (P.W.12) was nominated by the Superintendent of Police vide Ex-P.8 proceeding. He was transferred pending the investigation. P.W.13 who is the successor of P.W.12 continued the investigation and filed charge sheet. P.W.13 was not duly nominated by the Superintendent of Police as per Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Further, P.W.12 was directed by the Superintendent of Police to complete the investigation within 30 days from November 16th 2012, i.e., the date of Ex-P.8 proceedings. However, in this case, the Investigating Officer has filed charge sheet dated June 25th, 2014 into Court on August 6th, 2014. Hence, this Court is of the considered opinion that the provisions of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention

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of Atrocities) Rules, 1995 has also not been adhered properly.

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28.It is to be noted that Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 is mandatory in nature. Hence, this Court decides that the offence under Section 3(1)(x) of SC/ST (POA) Act has not been proved by the prosecution beyond reasonable doubt. For the above stated reasons, this Court is of the view that the prosecution miserably failed to establish the charge framed against the accused under Section 3(1)(x) of the SC/ST (POA) Act. In this regard, Trial Court has not properly considered the evidence and applied law. Hence, the Trial Court's judgment is liable to be interfered by this Court. Point No.(iii) is answered accordingly against the prosecution and in favour of the accused.

29.In this case, the occurrence took place on November 12th, 2012. FIR was registered on November 17th, 2012. Hence, there is a delay in registering FIR. P.W.2 and P.W.4 are injured witnesses and they were admitted in hospital as in-patients. In view of the nature of the injuries and also the nature of the evidence available on record, this Court is of the view that



though there was a delay of four days in lodging complaint and registering FIR, the said delay would not affect the case of the prosecution. Hence, the arguments advanced by the learned counsel for the accused in this regard is rejected.

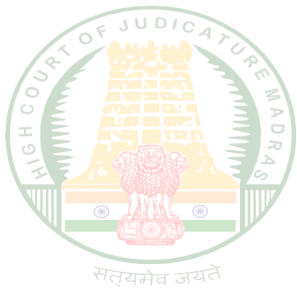
Conclusion

30.Resultantly, this Criminal Appeal is partly allowed in the following manner:

(i) Conviction and sentence imposed against A1, A2, A3 and A4 for the offence under Section 323 of IPC (3) counts are **sustained**.

(ii) Conviction under Section 326 of IPC against A4 is sustained. However, punishment imposed by the Trial Court for the offence under Section 326 of IPC is modified as hereunder:

A4 shall undergo **SIX MONTHS OF SIMPLE IMPRISONMENT** and a



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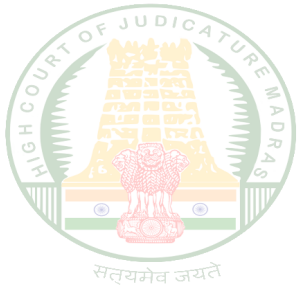
fine of **Rs.1,000/-**, in default thereof, to
undergo **ONE MONTH OF SIMPLE
IMPRISONMENT;**

(iii) Charge under Section 3(1)(x) of SC/ST (POA) Act against A1 to A4 is not proved and accordingly, the appellants / A1 to A4 are acquitted from the said charge.

(iv) The period of imprisonment, if any already undergone by A1, A2, A3 and A4 shall be given set off under Section 428 of Cr.P.C.

(v) Sentence imposed to A4 shall run concurrently.

(vi) Thirty days time counting from today is granted to A1 to A4 for surrendering before the Trial Court. If not surrendered within thirty days from today, the Trial Court is directed to take necessary steps to secure A1, A2, A3 and A4 commit them to the prison to undergo the remaining period of imprisonment.



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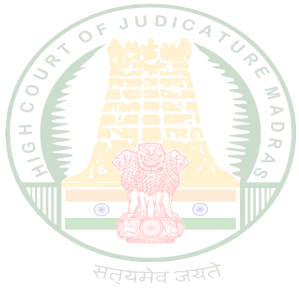
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Index : Yes
Internet : Yes
Neutral Citation : No
Speaking order
TK

To

- 1.The Sessions Judge
Special Court for Exclusive Trial of Cases
Registered under the SC / ST (POA) Act, 1989,
Villupuram.
- 2.The Deputy Superintendent of Police
Office of the DSP
Gingee, Villupuram.
- 3.The Public Prosecutor
High Court of Madras.

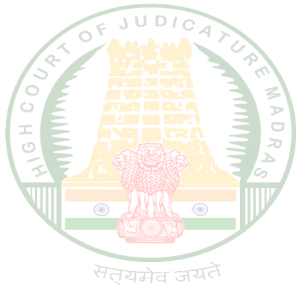
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R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
CRL.A.NO.812 OF 2016

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