

1.Udayakumar Vs. The State Through

1.Udayakumar Vs. The State Through

SooperKanoon Citation : sooperkanoon.com/16347

Court : Chennai

Decided On : Dec-18-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : 1.Udayakumar

Respondent : The State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 18.12.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.No.230 OF20071.Udayakumar 2.Kannan ..Appellants Vs The State through The Inspector of Police, Aruppukkottai Town Police Station Crime NO.696 of 2002 ..Respondent Prayer: Criminal appeal filed under Section 374(ii) Cr.P.C against the judgment of conviction and sentence dated 15.05.2007 rendered in Spl.S.C.No.87 of 2003 by the III Additional District and Sessions Judge(PCR) Madurai.

!For appellant : Mr.T.K.Gopalan ^For respondent : Mrs.S.Prabha Govt.

Advocate (Crl.

Side) Judgment Reserved on : 16.12.2014 Judgment Pronounced on : 18.12.2014

:

JUDGMENT

The Criminal Appeal is directed against the judgment of conviction and sentence dated 15.05.2007 rendered in Spl.S.C.No.87 of 2003 by the III Additional District and Sessions Judge(PCR) Madurai, wherein, the accused/appellants were found guilty for the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and were convicted and sentenced to undergo six months rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo one month simple imprisonment each and they were found guilty of the offence under Section 323 of I.P.C.and were convicted and sentenced to pay a fine of Rs.500/- each in default to undergo one week simple imprisonment.

2.

The case of prosecution briefly is as follows: i) P.W.1, Pandiyarajan is the defacto complainant and he belongs to Hindu Paraiyar community.

He is the resident of Kovilankulam.

He was working as Driver.

The accused belongs to Hindu Thevar community.

(ii) There was an enmity between the schedule caste people belong to Kovilankulam and one Anandakumar belong to Pannai Moondradaipu thevar community and in that regard, a compromise was ended in Aruppukkottai police station.

The said Anandakumar and three others threatened one Chinnasamy and Madasamy in Aruppukkottai bus stand.

Thereafter, on 03.12.2002, at 8.30 p.m.while P.W.1 was proceeding in the bus to Gopalapuram, he was standing in the front side.

When he reached the Union office stop, he stepped down.

At that time, the accused Udayakumar and Kannan, who was inside the bus, picked up a quarrel by uttering the words "eP vd;dlh gw;gany.

jhnaHhP ePa;f vq;fis mof;fpwtq;fsh ,g;g cd;id mof;fpnwd;lh" and fiRs.accused caught hold of the shirt of P.W.1 and assaulted in his left cheek and fisted his right cheek and hence, he went to Aruppukottai Nagar police station and gave a complaint Ex.P1 and he went to the Government Hospital for taking treatment.

(iii)On 03.12.2002 at about 10.50 p.m., P.W.5 Dr.Nachinarkiniyan treated P.W.1 and issued Ex.P3 A.R.Copy and opined that the injury sustained by P.W.1 is simple in nature.

(iv) on 03.12.2002 at about 9.45 p.m., one Mr.Senguttuvan, Inspector of Police, Aruppukottai police station received the complaint and registered a case in Cr.No.696 of 2002 for the offence under Sections 323 of I.P.C.and Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and prepared Ex.P.7, FiRs.Information Report put up the file before P.W.8, Nagarajan, Deputy Superintendent of Police.

(v)P.W.8, Nagarajan, Deputy Superintendent of Police took up the case for investigation.

He visited the place of occurrence at 10.45 p.m.and prepared Ex.P2, observation mahazer and Ex.P8 rough sketc.in the presence of P.W.4 Selvam and one Balamurugan and at 01.00 hours midnight, he arrested the accused and sent them to judicial custody and after completing his evidence, he filed a charge sheet against the accused.

3.The learned trial Judge, after following the procedures, framed necessary charges against the accused.

Since the accused pleaded not guilty, to prove the charges, P.Ws.1 to 8 were examined and Exs.P1 to P8 were marked.

Accused were questioned under Section 313 Cr.P.C.about the incriminating evidence and circumstances.

Accused denied the same in toto and stated that a false case has been foisted against them.

No witness was examined on the side of the defence.

4. On considering the oral and documentary evidence, the learned Sessions Judge found the accused/appellants guilty for the offence under Sections 3(1)(x) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and 323 of I.P.C and convicted and sentenced them as stated above.

Challenging the said judgment of conviction and sentence, the accused have filed this present criminal appeal.

5. Challenging the conviction and sentence passed against the accused/appellants, the learned counsel for the appellants would submit that the Deputy Superintendent of Police is not a competent person to investigate the matter as per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

To substantiate his argument, he relied a decision of this Court in Sambasivam and another versus State, rep.

by Deputy Superintendent of Police, Mannarkudi reported in (2007) 1 MLJ (Cri.) 654.

6. He would further submit that P.W.1 himself has admitted that he has given a written complaint.

But, Ex.P1 is a recorded statement by one Senguttuvan, Sub Inspector of Police, who was not examined before the Court and hence, the complaint given by P.W.1 was suppressed.

He would further submit that to attract the ingredients of Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, a person, who is not being a member of a Scheduled Caste or a Scheduled Tribe, with an intention to insult or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

But, in the present case, A1 and A2 in their 313 Cr.P.C. questioning, has stated that they do not know the caste of P.W.1.

and hence, the ingredients of the above said Act has not been made out.

He further submitted that P.W.1 was driver in Prasad Roadways plying the route between Pannaimoondradaipu and Aruppukkottai and since the driver of Prasad Bus has not stopped the bus in a particular stop, the villagers including A1 and A2 made agitation and that was compromised in the police station and because of that only utilising the service of P.W.1.

Prasath Roadways have given such a complaint and that factum was not considered by the trial Court.

7.He further submitted that P.Ws.2 and 3 were examined to prove the incident and since they were relatives, their evidence cannot be relied upon and those factum has not been considered by the trial Court and hence, he prayed for setting aside the conviction and sentence passed against the appellants.

8.Resisting the same, the learned Government Advocate (criminal side) would submit that in respect of Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

is concerned, the Deputy Superintendent of Police is a competent person to investigate the matter.

Here, P.W.8 Nagarajan, Deputy Superintendent of Police has investigated the matter and filed charge sheet.

But, in the trial, during his cross examination, his competency has not been questioned and hence, now, the appellants are not entitled to question the same.

9.She would further submit that P.Ws.2 and 3 are strangers and their evidence have corroborated the evidence of P.W.1 and P.W.2 is not his relative and even though they belong to same community, there is no reason for discarding the evidence of P.Ws.2 and 3 and their evidence has proved the incident.

She relied on the decision of the Apex Court in State of U.P.versus Krishna Master and others reported in 2011(1) SCC381and submitted that the non examination of Senguttuvan, who registered F.I.R is not fatal to the case of prosecution.

She further submitted that even some inconsistencies here and discrepancies there, it is not a reason for acquittal.

She would further submit that the Public Prosecutor was incharge of the case and it was for him to decide as to whether the examination of witness and merely because Senguttuvan was not examined, it is not fatal to the case of prosecution and hence, she prayed for dismissal of the appeal.

10.Considering the rival submissions made by both sides and on perusal of the typed set of papers.the FIRs.point to be decided is as to whether P.W.8 Nagarajan, Superintendent of Police is competent person to investigate the matter.

As per Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, it is specifically stated that the only person named and appointed after considering his past experience, ability and sense of justice, competent to investigate cases involving caste discrimination.

It is appropriate to incorporate para No.16 of the decision relied on by the learned counsel appearing for the appellant in Sambasivam and another versus State, rep.

by Deputy Superintendent of Police, Mannarkudi reported in (2007) 1 MLJ (Cri.) 654: "16.A careful reading of the above Rule and its purpose would reveal, that an Investigating Officer has to be appointed to investigate this kind of cases by the State Government/Director General of Police/Superintendent of Police, taking into account the past experience, sense of ability etc., of the office and this is possible only if the individuals are considered separately.

Rule does not say that all the Deputy Superintendent of Police are competent to investigate this kind of cases, irrespective of their experience, sense of ability etc.Therefore, in my considered opinion, a person, who has been named and appointed, considering his past experience and ability alone is competent to investigate this kind of cases, otherwise, the purpose of the Rule will not be served.

If all the Deputy Superintendents of police of the State are empowered, as observed by the trial Court, placing reliance upon some circular, which is not

available for perusal, before me, then, there may not be any chance for the higher authorities to take into account the past experience, sense of ability and justice to perceive the implications of the case of the officer, which were considered so essential, to investigate this kind of cases, considering the sensitiveness and the caste discrimination prevailed or prevailing throughout, though we have crossed so many years from the date of independence.

When the Rules framed under the Act, says how, by whom the case is to be investigated I am of the view, the same cannot be nullified or over looked, by issuing a circular, empowering all the Deputy Superintendents of Police, to investigate this kind of cases, forgetting or ignoring the purport of Rule 7 which is mandatory, not challenged.

If it is to be taken, all the Deputy Superintendents of Police are empowered, the Rule need not say, past experience, sense of responsibility etc. simply it would have been stated, "by the officer not below the rank of Deputy Superintendent of Police", in general for; which is not the import or purport of Rule 7, as read from its proper perspective.?

In the citation, the investigating officer was examined as P.W.10, but nothing has been posed to him that he is not a competent person to investigate the matter.

In such circumstances, I am of the view that the above citation is not applicable to the facts of the present case.

Even during the argument before the trial Court, he has not raised the point that he was not appointed as per Rule 7(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

In such circumstances, the arguments advanced by the learned counsel for the appellants that the investigating officer is not a competent person to investigate the matter does not merit acceptance.

11. Now, this Court has to decide as to whether the evidence of P.Ws.1 to 3 is reliable.

P.W.1 is the injured witness.

There is no quarrel over that he belongs to Schedules caste community.

P.W.6 Ramasamy was examined to prove the same.

P.W.7 Balu, Tahsildar was examined and through him Exs.P5 and 6, caste certificates belong to the accused have been marked to show that the appellant belongs to Hindu Thevar community.

12.The learned counsel appearing for the petitioner would submit that the appellants herein are not aware of the fact that P.W.1 belongs to Scheduled caste community.

He taken me through the 313 Cr.P.C.questioning, wherein they have stated that they belong to Thevar commnity, but, they do not now P.W.1 belongs to which community.

In such circumstances, it is appropriate to consider the evidence of P.W.1.

When P.W.1 was in witness box, a suggestion was posed him, wherein, he has stated that the Scheduled caste community people belong to Kovilankulam and Thevar community people belong to Pannai Moondradaippu are having problem and that has been compromised at Aruppukkottai Police Station.

He has further deposed that there was no enmity between them and P.W.1 and he has seen the accused only in the bus.

It is appropriate to incorporate the following portion of the evidence of P.W.1.

?.vjphpfSf;Fk; vdf;Fk; jdpg;g;l Kiwapy; ve;j tpnuhjKk; fpilahJ.

Vjphpfis mjw;F Kd;g[g].;rpy; tUk;nghJ ghh;j;jpUf;fpnwd;.?.

In such circumstances, I am of the view that the appellants are having no acquaintance with P.W.1 and hence, the appellants may not know the caste of P.W.1.

13. It is appropriate to incorporate Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which reads as follows: 3.3 (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view; As already stated, the appellants are not having the knowledge that P.W.1 belongs to Scheduled Caste community and hence, I am of the view that the ingredients of Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has not been made out and the prosecution has not proved the same beyond all reasonable doubt and hence, the conviction and sentence passed against the appellants for the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is liable to be set aside.

14. The another point to be decided as to whether the conviction under Section 323 of I.P.C. is sustainable? P.Ws. 1 to 3 are belonging to same community.

Even though their evidence is not fully reliable, their evidence has been corroborating with each other.

Evidence of P.W.5 Dr. Nachinarkiniyan has mentioned the injuries sustained by P.W.1.

A suggestion was posed to doctor that whether it is possible to get the injury while a person dashed against a hard wood and he accepted the same.

In the cross examination of P.W.1, a suggestion was posed to P.W.1 that when the driver of Prasad bus stated that he would not stop the bus at Pannai Moondradaipu and hence, there was a scuffle and in that transaction, P.W.1 fallen down and sustained injuries was denied by P.W.1.

In such circumstances, I am of the view that the evidence of P.Ws. 1 to 3 and Dr.

P.W.5 has been proved that P.W.1 has sustained injury.

The alleged occurrence was said to have taken place at 8.20 p.m., and P.W.1 was seen by P.w.5 at 10.15 p.m.and issued A.R.Copy, wherein, it was specifically mentioned that he was alleged to have assaulted by two known persons.

Hence, I am of the view that the prosecution has proved that the appellants had caused injury to P.W.1.

15.Merely because P.W.1 has stated that he has given a written complaint, Ex.P1 was recorded by one Senguttuvan, Sub Inspector of Police, who was not examined before the Court and in the cross examination, except that line, nothing has been elucidated.

In such circumstances, I am of the view that the argument advanced by the learned counsel for the appellants that the earlier written complaint has been suppressed does not merit acceptance.

16.For the foregoing reasons, I am of the view that the prosecution has not proved the guilt of the appellants/accused for the offence under Section 3(1)(x) of scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 beyond all reasonable doubt, whereas, the prosecution has proved the guilt of the appellants/accused for the offence under Section 323 of I.P.C.Therefore, the conviction and sentence in respect of Section 3(1) (x) of scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is liable to set aside and the appellants are liable to acquitted and the conviction and sentence in respect of 323 of I.P.C.is liable to be confirmed.

17.In the result, The Criminal Appeal is partly allowed.

The judgment of conviction and sentence dated 15.05.2007 rendered in Spl.S.C.No.87 of 2003 by the III Additional District and Sessions Judge(PCR) Madurai with regard to the offence under Section 3(1)(x) of scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is hereby set aside.

The appellants/accused are acquitted for the offence under Section 3(1)(x) of scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

The fine amount paid by the appellants, if any, for the offence under Section 3(1)(x) of scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, shall be ordered to be refunded.

The conviction and sentence passed under Section 323 of I.P.C.against the appellants is hereby confirmed.

The bail bonds, if any, executed by the appellants stand cancelled.

18.12.2014 Index : Yes/No website: Yes/No Arul To 1.

The III Additional District and Sessions Judge(PCR) Madurai.

2 The The Inspector of Police, Aruppukkottai Town Police Station 3.

The Public prosecutor, Madurai Bench of Madras High Court, Madurai.

R.MALA, J.

Arul CrI.A.(Md.No.230 of 2007 18.12.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com