
(2010) 12 MAD CK 0194

Madras High Court

Case No: Criminal A. (MD) No. 209 of 2005

Muthu Kumar and
Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Dec. 15, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 341, 352, 95
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)

Citation: (2011) 3 Crimes 498

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: T. Senthilkumar, for the Appellant; L. Murugan, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

C.T. Selvam, J.

This criminal appeal arises against the judgment dated 15.04.2005 made in Sp. S.C. No. 57/2004 on the file of the I Additional Sessions Judge, (P.C.R.), Tiruchirapalli.

2. The four appellants stand convicted for offences u/s 341 and 352 IPC and r/ w 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989. They were sentenced to pay a fine of Rs. 500/- each for offence u/s 341 IPC in default to undergo R.I. for one month each and sentenced to undergo R.I. for six months for each for offence u/s 352 IPC r/w 3(1)(X) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 as also as to pay a fine of Rs. 1,000/- each in default to undergo R.I. for two months.

3. The case of prosecution was that a village-meeting was convened in front of the house of one Sankilimuthu at Kaliakavilai at about 11.00 p.m., on 07.01.2004. The accused persons prevented P.W. 1 from making his representation and using his caste name abused and assaulted him with hands and thereby committed offences. They were charged with under Sections 341 and 352 IPC r/w 3(1)(x) of the Scheduled Caste/scheduled Tribe (Prevention of Atrocities) Act 1989 before the trial Court. The prosecution examined nine witnesses and marked five exhibits. The appellants/accused have preferred the present appeal against the judgment of conviction and sentence imposed upon them.

4. Heard Mr. T. Senthilkumar, learned counsel appearing for the appellants and Mr. L. Murugan, learned Government Advocate (Crl. Side) appearing for the respondent.

5. P.W. 1 is the complainant and has spoken to the restraint exercised upon him and of having been abused by using his caste name. P.W. 2, has spoken to the occurrence. P.W. 3 has spoken only to the assault of P.W. 1 by the accused. P.W. 2 has been treated as hostile. His evidence however would point to a tussle between P.W. 1 and the first accused and that the dispute relating to land holding was raised by P.W.1, which was objected to by the first accused informing that the village meeting had been called for, not to discuss such issue, but to deal with the issue of P.W. 1 and his group, not attending to the beating of drums for the Pongal festival. His evidence also would show that towards avoiding a caste dispute, the first accused was taken and left at this house and the entire group was pacified towards avoiding anything untoward. P.Ws. 5 and 6 are the other witnesses. P.W.5 was the Mahazar witness. P.W.6 was an eyewitness, who has spoken to the attack on P.W. 1. P.W. 7 Tahsildar, has issued the caste certificate relating to the accused and P.W. 1. P.W. 8 Sub-Inspector of Police, registered the case. P.W.9 was the Investigating Officer.

6. Learned counsel for the appellant would state that no offence whatsoever under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 stood made out. Neither the complaint in the case nor the statement of the witnesses recorded by the Investigating Officer informed thereof. Such fact stood admitted by the Investigating Officer in the course of cross examination. He would also impress upon this court that the occurrence is said to have taken place at about 9.00 p.m. on 17.1.2004. The FIR, Ex.P1 in the case had been registered after a long delay i.e. at 11.30 p.m. on 18.01.2004, the next day, and the printed FIR Ex.P4 had reached the Court only the following day. In these circumstances, he would submit that the entire prosecution case was false.

7. The learned Government Advocate (Crl. side) would point to the evidence of P.Ws. 1 to 6 and inform that P.W.2 though had been treated hostile, has spoken to the occurrence and so had P.W. 3, who was a respectable member of the village and therefore, their evidence is to be believed

8. I have considered the rival submissions.

9. Though there is a delay in the registration of FIR, this court therefrom would not infer that no occurrence had taken place. Even so, (sic)md that P.W. 2, though had been treated hostile has spoken to the occurrence and so has P.W. 3, who was a respectable member of the village. We also find that P.W.3 has deposed to the breaking out of the commotion. As rightly pointed out by the learned counsel for the appellants/accused, given the admission of the investigating Officer, P.W.9, no offence as would attract the application of the Scheduled Caste/ Scheduled Tribe (Prevention of Atrocities) Act, 1989 stands made out. This leads to the question of what offence would stand made out against the accused. P.W.6, who makes much of the occurrence is a close relative of P.W. 1 and is not a reliable witness. It is seen that the village meeting was called for a different purpose, wherein P.W.1 has raised an issue relating to dispute regarding land holding. This has been objected to by the accused party and a commotion had arisen. The evidence of P.W. 2 is clear- that towards avoiding any communal strife, the accused No. 1 was taken and made to stay at his house. There is absolutely no proof of any prior enmity between the prosecution and accused party\ or of any injuries suffered by P.W.1. The delay in preferring the complaint is indicative, that none, not even the complainant P.W.1, thought much of the incident, to start with and that the complaint was an afterthought.

10. In this background and given the nature of occurrence, this court would find applicable Section 95 IPC, which reads as follows:

(95) Act causing slight harm

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

11. This appeal stands allowed.