(2009) 09 MAD CK 0260

Madras High Court

Case No: Cil. Appeal No. 734 of 2002

Thangarasu and Another		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: Sept. 14, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 207, 209, 374(2)
- Evidence Act, 1872 - Section 13, 32
- Penal Code, 1860 (IPC) - Section 323, 324, 379, 447
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 - Rule 7, 7(1)

Citation: (2010) CriLJ 1299

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: A.K. Kumarasamy, for the Appellant; R. Muniapparaj, Government Advocate (Crl. Side), for the Respondent

Final Decision: Allowed

Judgement

P.R. Shivakumar, J.

This criminal appeal has been filed u/s 374(2), Cr.P.C. by the accused Nos. 1 and 3 in S.C. No. 176/1001 on the file of the Court of the Principal Sessions Judge, Erode, challenging the judgment of the said court dated 18.04.2002 made in the above said sessions case convicting them for offences punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 447, 323 and 379, IPC and imposing a sentence of six months rigorous imprisonment and a fine of Rs. 2,000/- with a default sentence of three months rigorous imprisonment for the offence punishable u/s 3(1)(x) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989, three months rigorous imprisonment for the offence u/s 447, IPC, six months rigorous imprisonment for the offence u/s 323, IPC and rigorous imprisonment for one year for the offence u/s 379, IPC. The trial court has ordered that the sentences shall run concurrently.

2. The case of the prosecution, in brief, can be stated as follows:

i) P.W.3-Chinnakuruvan is the father of Mani (P.W.1), Viswan (P.W.2) and the de facto complainant, Thangarasu (since deceased). All of them were residents of Thonnimaduvu thottam, Vattakadu within the jurisdiction of Vellithimppur Police Station. Rathinal (P.W.4) is the wife of P.W.2. All of them are members of Scheduled Caste. A tractor bearing Regn. No. TN-36 C-8142 had been purchased in the name of P.W.1 availing the loan provided by Tamil Nadu Industrial Investment Corporation Ltd. (TIIC Ltd.). However, they had also borrowed some amount from Thangarasu (son of Rangasamy), the first accused. On 14.03.2001, P.W.1 had parked the above said tractor with trailer in the front yard of their house in Thonnimaduvuthottam, Vattakadu. With the intention of committing punishable offences, the appellants 1 and 2 herein (A1 and A3), along with Uthirasamy (A2), Natraj (A4) and 10 more unidentified persons, trespassed into the front yard of the house of P.W. 3 and demanded repayment of money after catching hold of P.W.1-Mani by his shirt. He replied that the entire amount due to the first appellant (A1) was repaid and nothing remained to be repaid. On hearing the said reply, the accused persons informed P.W.1 that he should pay the amount or else they would take the tractor. On hearing the noise, the de facto complainant, Thangarasu (since deceased) came out from their house. On seeing him the accused persons caught hold of them by their hair, attacked them with their hands and caused simple injuries. Similarly, P.W.2-Viswan and his wife Rathinal (P.W.4) came out. But sensing trouble, P.W.2-Viswan ran away from the said place and took shelter in the nearby sugarcane field. P.W.4-Rathinal was also assaulted by the accused persons. Thereafter, the accused took the tractor and also P.W. 1 to Uppukodikkal thottam where he was compelled to affix his signature in blank bond papers. However, P.W.1 managed to escape from the said place. Meanwhile, the de facto complainant, Thangarasu had been taken to Anthiyur Government hospital for treatment.

ii) P.W.7-Dr. Mrs. N. Ranjani examined him at 5.00 p.m. on 15.03.2001 and admitted him as an in-patient; Later on she issued Ex.P4-wound certificate certifying that the de facto complainant-Thangarasu had suffered simple injuries. At about 8.30 p.m. on the very same day she also examined P.W.1, who came to the said hospital with a police memo, found him with a small abrasion on the back of the chest measuring 1 x 1 cm and issued Ex.P7-wound certificate opining that the said injury was a simple one.

iii) On receipt of intimation over phone regarding the admission of the de facto complainant in the Government hospital, Anthiyur, P.W.10, the then Sub-Inspector of Police, Vellithimppur Police Station went to the said hospital and recorded the

statement of the de facto complainant, Thangarasu. After recording the statement of Thangarasu, which has been marked as Ex.P19, he came back to the police station and registered a case in Cr. No. 84/2001 on the file of Vellithiruppur Police Station for alleged offences punishable under Sections 447, 324, 323, 379, IPC and also an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, based on Ex.P19 complaint. Ex.P20 is the first information report prepared by P.W. 10 in the printed format for registering the case.

3. As the jurisdictional Deputy Superintendent of Police was on leave, P.W.11, the then Deputy Superintendent of Police, Gopichettipalayam, who was also in-charge of Bhavani Division received the intimation regarding the registration of the case given by P.W. 10 over phone, went to Vellithiruppur got the copy of the first information report and took up the case for investigation. During investigation, he prepared Ex.P1-Observation Mahazar and Ex.P2-rough sketch in the presence of P.W.5 and Anr. recorded the statements of witnesses and gave requisition to the Tahsildar, Bhavani to issue community certificates to the concerned prosecution witnesses and for the accused. Thereafter, P.W. 12, the then Deputy Superintendent of Police, Bhavani, who joined duty after expiry of leave, conducted further investigation, got the community certificates of accused persons marked as Exs.P9 to P12 from the Zonal Deputy Tahsildar (P.W.9) and that of P.Ws.1 to 4, the de facto complainant Thangarasu and Kaliammal (wife of P.W.3) marked as Ex.P13 to P18 from the Tahsildar, examined the Branch Manager of TIIC, Erode, recovered the tractor (M.O.1) under Ex.P3-Seizure Mahazar in the presence of P.W.6-VA0 and another witness, completed the investigation and submitted a final report alleging that accused 1 to 4 had committed offences punishable under Sections 447, 324, 323, 379, IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The same was taken on file as PRC No. 14/2001 on the file of the learned Judicial Magistrate, Bhavani. After supplying copies of the documents proposed to be relied on by the prosecution, u/s 207, Cr.P.C., the case was committed u/s 209(a), Cr.P.C. to the Court of Principal Sessions Judge, Erode, who was the special Judge for trial of offences under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned Principal Sessions Judge (Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.) took it on file as S.C. No. 176/2001. Charges were framed for offences punishable u/s 447 IPC, Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 379, IPC (charge Nos. 1, 2 and 5) against all the accused, for an offence punishable u/s 324, IPC (charge No. 3) against accused Nos. 2 to 4 and for an offence punishable u/s 323, IPC (charge No. 4) against the first appellant/first accused. All the accused persons denied the respective charges made against them, pleaded not guilty and wanted the case to be tried.

4. In order to substantiate the charges P.Ws.1 to 12 were examined, Exs.Pl to P21 were marked and M.O.1-tractor bearing Regn. No. TN-36 C-8142 was produced on the side of the prosecution. After completion of recording the evidence on the side of the prosecution, the appellant herein/accused was questioned u/s 313(1)(b) of Cr.P.C regarding the incriminating materials found in the evidence adduced on the side of the prosecution. They denied them as false and once again reiterated that they were innocent. No witness was examined, but Exs.P1 to P3 were marked on the side of the accused persons.

5. The trial Court heard the arguments advanced on either side and considered the evidence brought before it in the light of such arguments. Upon such consideration, the learned trial Judge held accused Nos. 2 and 4 (Uthirasamy and Nataraj) not guilty of any one of the charges framed against them and acquitted them of all the charges. However, the first appellant (A1) and the second appellant (A3) were found guilty of offences punishable under Sections 447, 323, 379 IPC and an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The trial Court convicted them for the above said offences and awarded sentence of punishment as indicated supra.

6. As against the acquittal of accused Nos. 2 and 4, no appeal has been preferred by the State. Challenging the conviction and sentence imposed on them, the appellants 1 and 2 (A1 and A3) have come forward with the present appeal on various grounds set out in the appeal petition.

7. The point that arises for consideration in this appeal is

whether the conviction of the appellants (A1 and A3) for offences punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 447 IPC, Section 323 IPC and Section 379 IPC and the sentence of punishment imposed on them can be sustained in law?

8. Mr. A. K. Kumarasamy, learned Counsel for the appellants, advancing arguments on behalf of the appellants, submitted that the conviction of the appellants and the sentence of punishment imposed on them were contrary to law, weight of evidence and probabilities of the case; that except the testimony of the interested witnesses, namely P.Ws. 1 to 4, who were members of one and the same family inimieally disposed of towards the accused in connection with the money transactions, no independent witness was examined on the side of the prosecution and the said fact was not properly considered by the learned trial Judge; that before accepting the testimonies of P.Ws.1 to 4 as reliable they should have been put to the test of careful scrutiny, as they happened to be the interested witnesses; that if such a test was applied, the learned trial Judge would have come to the conclusion that the said witnesses were not reliable witnesses; that there were many vital contradictions suggesting the improbabilities of the case propounded by the prosecution and that the said contradictions coupled with the explanations offered by the accused and

the documents produced by the accused would clearly show that the case had been foisted against the accused in order to evade the liability of P.W.1 towards the first appellant (A1). The learned Counsel for the appellants also pointed out the fact that there was an inordinate delay in lodging the complaint and the said delay had not been properly explained by the prosecution; that the prosecution version as revealed by the evidence of witnesses examined on the side of the prosecution was not uniform regarding when, where and by whom the information regarding the commission of the offences was given to the police first in point of time; that a proper consideration of the evidence would lead to the inference that there was suppression of the earlier information and concoction of a case after due deliberation and that the learned trial Judge, without properly appreciating the evidence did come to an erroneous conclusion that the story of the prosecution regarding the alleged occurrence was true and that the same was proved beyond reasonable doubt.

9. The learned Counsel for the appellants contended further that despite the fact that none of the eye-witnesses, namely P.Ws.1 to 4 did not speak about any insult or intimidation in the name of the caste, the court below chose to convict the petitioner for an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 solely based on the complaint of the de facto complainant who could not be examined as a witness before the court as he died even before the commencement of trial; that there had been a violation of the mandatory provision found in Rule 7(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 regarding the appointment of the investigating officers in cases involving an offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; that though the case had been stated to be investigated by a police officer not below the rank of a Deputy Superintendent of Police, they had not been appointed in tune with the above said rule and that viewed from any angle, the conviction recorded by the court below should be held erroneous and liable to be set aside by this Court in exercise of its appellate powers. Without prejudice to the above said contentions challenging the convictions, the learned Counsel for the appellants also contended that the sentence imposed on the appellants were highly excessive and out of proportion.

10. The submissions made by Mr. R. Muniapparaj, learned Government Advocate (Crl.Side) on behalf of the respondent police as an answer to the arguments advanced on the side of the appellants and in an attempt to sustain the conviction and sentence, were also heard. This Court also perused the entire materials available on record.

11. The appellants have been found guilty and convicted for the offences : 1) punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, 2) punishable u/s 447, IPC, 3) punishable u/s 323, IPC and 4)

punishable u/s 379, IPC.

12. The first charge framed by the court below is regarding the offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(1)(x) makes intentional insults or intimidations with intent to humiliate a member of a scheduled caste or a scheduled tribe in any place within public view, a punishable offence if such insult or intimidation was committed by a person not being a member of a scheduled caste or scheduled tribe. The following conditions are necessary to constitute an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:- 1) The affected person should be a member of a scheduled caste or a scheduled tribe; 2) the offender should not be a member of a scheduled caste or a scheduled tribe; 3) there must be an intentional insult or intimidation with intent to humiliate a member of a scheduled caste or a scheduled tribe and 4) such insult or intimidation should have been made in any place within the public view.

13. In this case, the offence is alleged to have taken place in the front yard of the house of P.Ws.1 to 4. There is no evidence to the effect that apart from the victims of such insult or intimidation and the persons who is said to have caused such intimidation or insult, there was any other person witnessing the occurrence to show that the insult or intimidation was committed within public view. The learned Counsel for the appellants has rightly contended that the term public occurring in Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall mean persons other than the accused and the persons insulted or intimidated. Of course, it is true that the prosecution was able to prove that P.Ws.1 to 4 and Thangarasu, the de facto complainant (since deceased) were members of a scheduled caste by the production of the community certificate marked as Exs.13 to 18 issued by the competent authority, namely Tahsildar. There is no dispute regarding the fact that the said persons belonged to Hindu-Chakkilian community which is notified as a scheduled caste. The fact that the accused persons, especially, the appellants herein were not members of either a scheduled caste or a scheduled tribe, is also not in dispute. They are proved to be non-members of a scheduled caste or a scheduled tribe by the production of Exs.P9 to P12 community certificates issued by a competent authority, namely Deputy Tahsildar, who was also examined as P.W.9. From Exs.P9 to P12, it is quite obvious that all the accused persons including the appellants belonged to Hindu-Padayachi caste notified as a most backward class. Therefore, the first two conditions have been proved by the prosecution. Apart from the failure to prove condition No. 4, the prosecution has also failed to prove condition No. 3, namely intentional insult or intimidation. Out of the four eye-witnesses examined as P.Ws.1 to 4, none has stated that either any one of them, or the de facto complainant or the wife of P.W.3 was insulted or intimidated in the name of caste. Of course, it is true that in Ex.P19, the statement allegedly given by the de facto complainant, Thangarasu, it has been stated that there was an insult caused mentioning the name of caste by uttering the following words:-

(Vernacular matter omitted...Ed.)

Of course the statement given by the de facto complainant based on which the FIR has been drawn stands not on a better footing than a statement of a witness recorded by the police u/s 161, Cr.P.C. However, since the de facto complainant Thangarasu is alleged to have died subsequent to the registration of the case and before the trial was started, it can be sought : to be introduced in evidence by virtue of Section 32 of the Indian Evidence Act, 1872 provided it falls within any one of the eight categories enumerated in the said section. Such previous statements of persons who are dead can be admitted in evidence 1) when such statement relates to the cause of his death, 2) was made in the course of business, 3) was made against the interest of maker, 4) was given as an opinion as to public right or custom or matters of general interest, 5) was given relating to the existence of relationship by blood, marriage or adoption, 6) made in a will or deed relating to family affairs, 7) made relating to a transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied which was inconsistent with its existence (as mentioned in Section 13(a) of the Indian Evidence Act, 1872) and 8) made by several persons and expressing feelings or impressions on their part relating to the matter in question.

14. A careful consideration of the above said provision and the contents of Ex.P19 will make it clear that the said statement cannot be fit in any one of the above said Clauses 1 to 8 of Section 32 of the Indian Evidence Act, 1872. Therefore, convicting a person merely relying on an averment made in the complaint without the same having been proved by reliable evidence, shall not be in accordance with law. On that ground alone, the finding of the court below that the appellants were guilty of an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, conviction of the appellants for the said offence and the sentence imposed thereof deserve disapproval of this Court and they are liable to be reversed and set aside.

15. Apart from the above said grounds for coming to the conclusion that the said conviction cannot be sustained, there are also other important grounds to support and strengthen the said conclusion. The statement of the de facto complainant forming the basis of FIR marked as Ex.P19 has not been proved beyond reasonable doubt to be the earliest information given to the police. There are many vital contradictions in the evidence adduced on the side of the prosecution in this regard. The contradictions will go to show that Ex.P19 could not have been the information received by the police first in point of time and there are grounds for holding that the information received by the police first in point of time could have been burked and Ex.P19 could have been brought into existence after consultation and deliberation. The reasons for such conclusion shall be dealt with elaborately while dealing with the sustainability of the conviction for other offences.

16. Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 says that an offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police and that the Investigating Officer shall be appointed by the State/Director General of Police/Superintendent of Police after taking into his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 reads as follows:

Investigating Officer : (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under Sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer.

17. A reading of the said rule will show that though the rank of the officer to be appointed as an Investigating Officer in such cases has been stated to be not below the rank of Deputy Superintendent of Police, not all the police officers who are in the said rank or ranks higher than the Deputy Superintendent of Police are competent to be appointed as an Investigating Officer. The persons with such past experience, sense of ability and justice to perceive the implications of the case and investigate the case along with the right lines within the shortest possible time are the qualities for being appointed as an Investigating Officer in such cases. The appointing authorities are the State Government, Director General of Police and Superintendent of Police.

18. In this case, though the investigating officers happened to be the Deputy Superintendents of Police, no order appointing them as Investigating Officers in the particular case or generally for such cases has been either produced along with or referred to in the charge-sheet. Therefore, it is obvious that there has been failure to properly comply with the above said mandatory provision. The said non-compliance of the above mandatory provision regarding appointment of Investigating Officer has been pointed out only as an additional ground to support

the conclusion arrived at to the effect that the conviction of the appellants for an offence u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained. The conviction of the appellants u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 cannot be sustained, even if the above said additional ground is omitted from the purview of consideration, as it has been pointed out supra that there is no admissible evidence to prove that the appellants caused insult or intimidation in the name of caste. Therefore, this Court does have no hesitation in coming to the conclusion that the conviction of the appellants for an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 by the trial court is perverse and that the same cannot stand the scrutiny of this Court.

19. The conviction of the appellants for the other offences, namely offences punishable under Sections 447, 323 and 379, IPC shall be taken up for discussion together. The very occurrence alleged on the side of the prosecution is disputed by the appellants. According to the appellants, setting up an imaginary occurrence, the case has been foisted against the appellants and other accused persons. The learned Counsel for the appellants pointed out several material contradictions found in the evidence of prosecution witnesses and referring to the documents produced on the side of the accused as Exs.D1 to D3 argued that a false complaint was given citing an imaginary occurrence pursuant to a dispute regarding the repayment of the loan advanced by the first appellant.

20. It is not in dispute that the tractor bearing Regn. No. TN-36 C-8142 produced as M.O.1 was purchased by P.W.1-Mani with the help of the financial assistance extended by TIIC. It is also not in dispute that apart from the loan advanced by TIIC, P.W. 1 did get some amount from the first appellant as loan for purchasing the said tractor, perhaps to cover the margin money. It is also not in dispute that the possession of the said tractor had been pledged with the first appellant and possession of the same was handed over to the first appellant based on the understanding that the first appellant would get back the tractor, after repaying the amount lent by the first appellant. However, a novel stand had been taken to the effect that the amount borrowed from the first appellant had been repaid and the tractor pledged with the first appellant had been redeemed several months prior to the date of occurrence. However, the evidence of the prosecution witnesses in this regard differ in material particulars. P.W.1, in his evidence in chief examination has stated that the tractor was purchased by him in 1999; that 1 1/2 years prior to the date of his examination as P.W.1 in the trial court, he had handed over the same for the amount borrowed from the first appellant and that he took back the tractor six months after the said pledge was created. In his cross-examination, at one place, he would state that he borrowed a sum of Rs. 25,000/- from the first appellant and at another place, he would state that he borrowed a sum of Rs. 5,000/- from first appellant and Rs. 20,000/- from the second appellant (A3). At yet another place, P.W.1 has stated that he along with his father, namely P.W.3 borrowed a sum of Rs.

20,000/- from the second appellant/A3 and executed Ex.B2. P.W.1 who has admitted that such a document evidencing borrowal was executed in favour of the first appellant (Al), is not able to produce any document showing the discharge of such a debt. At one place, he has stated that he repaid the amount borrowed from the first appellant and took back the tractor from him. In yet another place, he has stated that the bank authorities (referring to the officials of the TIIC) seized the vehicle from the first appellant and handed over the same to P.W. 1.

21. P.W.2, who is none other than the brother of P.W.1 would plead ignorance as to whether P.W.1 had borrowed any amount for the purchase of tractor from the appellants. P.W.3, the father of P.Ws. 1 and 2 would state that it was he who purchased the tractor in the name of his son P.W.1. It is the evidence of P.W.1 that they had borrowed a sum of Rs. 25,000/- from the appellants for which they had pledged the tractor with the first appellant, whereas P.W.3 would state that the appellants 1 and 3 paid a sum of Rs. 20,000/- only as hire charges for using the tractor. It is also the evidence of P.W.3 that the tractor was handed over to the appellants on the understanding that the appellant would pay the monthly dues to TIIC which would come around Rs. 15,000/- per month. An entirely new case has been sought to be introduced by P.W.1 that prior to the occurrence concerned in this case the accused persons forcibly took the tractor from P.W.3 after attacking him and took the tractor to Burgur. It is his further evidence that he waited for four days in vain after lodging a complaint on the file of Vellithiruppur Police Station and thereafter he gave a complaint to TIIC, pursuant to which, the TIIC authorities seized the tractor from Burgur and entrusted the same to P.W.3 at his residence. During cross-examination, P.W.3 has performed a somersault and stated that he did not entrust the tractor to the accused persons either for hire or on any other account. P.W.4 admitted that P.W.1 had borrowed a sum of Rs. 20,000/- from the first accused, but she would assert that the said amount was repaid. If it is true that P.W.1 got back the tractor from the first appellant after pledging the same with the first appellant by paying back the amount borrowed, P.W.1 or his family members alone would have paid the dues payable to TIIC thereafter. It is the evidence of P.Ws. 1 to 3 that six months after the creation of pledge, the tractor was redeemed and thereafter it was in the possession and custody of P.W.1. As pointed out supra there is contradiction regarding how P.W.1 regained possession.

22. While narrating how the accused persons happened to be in possession of the property prior to the date of occurrence and P.W.1 was able to regain possession, P.W.1 has come forward with an entirely new story by giving evidence to the effect that the occurrence concerned in this case was not the first time when the accused persons forcibly took the tractor from P.W.1 and that even on a prior occasion during day time the accused persons took the tractor from his possession after attacking him, pursuant to which, he lodged a complaint at the first instance on the file of Vellithiruppur Police Station; that the police people in Vellithiruppur Police Station contacted over phone the Station House Officer in Burgur Police Station and

thereafter asked P.W.3 to go home promising that they would hand over the tractor to him; that after waiting for four days in vain he had to give a complaint to the officials of TIIC and that pursuant to the said complaint the officials of TIIC seized the tractor from Burgur and handed over the same to P.W.3.

23. There is an in-built discrepancy in the evidence of P.W.1 as to whether his father-P.W.3 was available in the house at the time of alleged occurrence or not? At one place he said his father and mother were not found in the house and they had gone to Viralikattur. At another place he would say that his mother along with his brother were sleeping inside the house, whereas he was sleeping (vernacular matter omitted) at the entrance of the house. It is the evidence of P.W.1 that on hearing the noise raised by the accused, P.W.2-Viswan (referred as Viswanathan by P.W.1) and his wife came out whereupon the wife of Viswanathan was slapped on her face and Viswanatha also was attacked by the accused pursuant to, which Viswanathan ran into a nearby sugarcane field for safety. P.W.2-Viswan has not stated anything in his evidence to the effect that he was attacked by the accused persons. He has simply stated that P.W.1-Thangarasu was attacked by the accused and other persons; that they also slapped on the face of P.W.3''s wife and that he ran into a nearby sugarcane field for safety. An improved, embellished and a new version was sought to be given by P.W.2 to the effect that the accused tore the jacket of his wife and beat her.

24. In this regard, there is a vital contradiction which will greatly impair the credibility of the above said prosecution witnesses, namely P.Ws.1 and 2. All the witnesses deposed to the effect that the father of P.Ws.1 and 2 was not there in the scene of occurrence when the occurrence allegedly took place. It is the evidence of P.W.2 that after the occurrence, he went to Viralikattur and informed P.W.3 of the occurrence; that then along with his father (P.W.3) he went to Anthiyur Government Hospital and asked his father to be there in the hospital to help Thangarasu and that thereafter he went to the office of the Superintendent of Police, Erode along with his wife and mother and informed him of the occurrence whereupon the Superintendent of Police instructed the Deputy Superintendent of Police, Bhavani over telephone to take action. In his cross-examination, he has stated that he took his brother Thangarasu to Anthiyur Government Hospital by bus in the early morning of 15.03.2001; that after leaving him in the Government Hospital, Anthiyur, he went to Vellithiruppur Police Station at about 8.00 a.m. and gave a complaint in writing and that since they did not take immediate action he went to the office of the Superintendent of Police, Erode and gave a complaint in writing to the Superintendent of Police. As per the evidence of P.W.1, he gave a complaint in writing at about 8.00 a.m. on 15.03.2001 to the Station House Officer of Vellithirupur Police Station and a second complaint on the very same day to the Superintendent of Police, Erode. To some extent the evidence of P.W.3 is also to the effect that a complaint was lodged on the file of Vellithiruppur Police Station by P.W.2 and that thereafter P.W.2 and P.W.3''s wife went to the office of the Superintendent of Police

and gave a complaint to the Superintendent of Police. P.W.4 who is the wife of P.W.2 has also stated that she along with her husband and mother-in-law took Thangarasu to Anthiyur and got him admitted in the government hospital; that thereafter all the three went to the office of the Superintendent of Police and gave a complaint and that when they again went to the hospital to see Thangarasu, the Deputy Superintendent of Police came there and examined her. She would state that at 12.00 noon they met the Superintendent of Police, Erode and gave a complaint in writing. From Ex.P4-wound certificate, it is obvious that the deceased Thangarasu was admitted in the hospital on 15.03.2001 at 5.00 p.m. Ex.P5 is the alleged intimation sent by the medical officer to the police. It is said to have been issued at 7.30 p.m on 15.03.2001. Ex.P6 is the wound certificate of P.W. 1 in which it has been stated that he was examined by the medical officer at 8.30 p.m on 15.03.2001.

25. It is the clear admission made by P.Ws.1 to 4 that P.W.3-Chinnaguruvan was not present in the scene of occurrence at the time of alleged occurrence. However Ex.P7 has been produced on the side of the prosecution as if P.W.3 was treated for the injuries allegedly sustained in the scene of occurrence. As per Ex.P17 he was also treated by the medical officer at 8.30 p.m on 15.03.2001. Ex.P20 is the first information report, whereas Ex.P19 has been produced as the statement of Thangarasu based on which information the case was registered. In Ex.P19, it has been noted as if the statement of Thangarasu was recorded at the Government Hospital, Anthiyur on 15.03.2001 at 16.30 hrs. As per the endorsement found in Ex.P19 and the particulars found in Ex.P20-first information report, the case was registered on the file of Vellithiruppur Police Station at 17.00 hrs on 15.03.2001. We have already seen that P.Ws.2, 3 and 4 have deposed to the effect that after admitting Thangarasu in the Government Hospital, Anthiyur, P.W.2, his wife P.W.4 and the wife of P.W.3 went to Vellithiruppur Police Station and gave a written complaint there and thereafter went to the office of the Superintendent of Police, Erode and gave a complaint in writing to the Superintendent of Police also. P.W.4 was more specific in her assertion regarding the time of lodging of the complaint with the Superintendent of Police and she has stated that the said complaint was given at 12.00 noon on 15.03.2001. Therefore, it is quite obvious that Ex.P19 which is said to have been recorded at 4.30 p.m on 15.03.2001 could not be the complaint received by the police first in point of time. The alleged complaints by P.W.2 at Vellithiruppur Police Station in forenoon hours of 15.03.2001 and the complaint given to the Superintendent of Police at 12.00 noon on the same day have not seen the light of the day. If at all it is true that such complaints were given, the same should have been burked and Ex.P19 should have been prepared after consultation and deliberation. Or else, if at all Ex.P19 happened to be the information to the police received first in point of time, then the above said witnesses should be held unreliable.

26. In this case, as we have already seen the deceased Thangarasu was admitted in the hospital only at 5.00 p.m on 15.03.2001 and the intimation regarding his

admission was sent to the police on 15.03.2001 at about 7.30 p.m. Therefore, it is quite improbable that the police might have come to the hospital to record a statement at 4.30 p.m on 15.03.2001 without there being any other information to the police. In Ex.P20-First Information Report, the Sub-Inspector of Police who is said to have recorded the statement of Thangarasu has not stated the time at which he received intimation regarding admission of the said Thangarasu. There is a collection in recording time. The time was corrected and written as "(vernacular matter omitted...Ed.);" without specifying the time. The statement itself is said to have recorded at 4.30 p.m when the intimation to the police was sent by the hospital authorities at 5.00 p.m. It is highly improbable that the Sub-Inspector of police would have gone to the hospital at 4.30 p.m to record the statement of Thangarasu. From the same it is quite clear that Ex.P19 would not have been recorded at the time noted in the said document. It should have been prepared subsequently. When such discrepancy regarding the very foundation of the case is there, the same will greatly impair the credibility of the prosecution case. As there are admissions to the effect that complaints were lodged with the Station House Officer, Vellithiruppur Police Station and the Superintendent of Police, Erode in the forenoon and 12.00 noon respectively of 15.03.2001, this Court has to accept the contention of the learned Counsel for the appellants that there had been suppression of fact and burking of earlier statements. Coupled with the above said suppression of fact and burking of earlier statements, which will go to show that Ex.P19 would not be the information received by the police first in point of time regarding the occurrence alleged in the statement, there are many improbabilities in the case of the prosecution as pointed in the earlier paragraphs of this judgment, which will go to show that the very occurrence itself could be an imaginary one.

27. Viewed from any angle, this Court has to necessarily come to the conclusion that there is a reasonable suspicion regarding the very occurrence itself; that the benefit of such suspicion shall be given to the appellants/accused and that the appellants are entitled to be acquitted of the offences for which they were prosecuted before the court below. The learned trial Judge without averting to the above said aspects of the case, came to an erroneous conclusion that the charges made against the appellants (Al and A3) for offences punishable under Sections 447, 323 and 379, IPC and an offence punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 had been proved beyond reasonable doubt and based on such erroneous finding, convicted them for the said offences. Therefore, without any hesitation, this Court comes to the conclusion that the said finding of the court below and the conviction recorded by the court below are erroneous, discrepant, infirm and are liable to be set aside.

28. Admittedly, P.W.1 is the registered owner of the tractor marked as M.O.1. He has also produced RC Book of the tractor. Though there is an admission that the tractor was left in the custody of the first appellant (A1) for some time, clear evidence has been adduced to the effect that prior to the date of occurrence, P.W.1 regained

possession of the tractor. The accused persons have also admitted that they were not having the possession of the tractor; that the tractor was available with P.W.1 and that the police took the tractor from P.W.1 and concocted and created false documents as if the same was recovered from the third accused (second appellant). Though they have taken a stand that P.Ws.1 and 3 had borrowed amounts pledging the tractor with Al, they have clearly admitted that the possession of the tractor on the relevant date was not with them and that the tractor which was available with P.W.1 was taken by the police and wrongly shown to be recovered from A3. They have not made any claim that they are having a better right to have the possession of the tractor. Under such circumstances, even though this Court has come to the conclusion that the appellants are not guilty and they should be acquitted of the offence u/s 379, IPC also, it is not only reasonable but also just and necessary to confirm the order of the trial court directing the return of the tractor marked as M.O.1 to P.W. 1. Hence despite the fact that the conviction of the accused for offences and the sentences passed thereof are being set aside. The property order incorporated in the judgment of the trial court deserves to be confirmed.

29. In the result this appeal is allowed and the conviction of the appellants by the trial court for offences punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Sections 447, 323 and 379, IPC is set aside. The appellants are acquitted of all the charges with which they stood charged. However, the property order passed by the trial court directing the return of M.O.1-Tractor bearing Regn. No. TN-36 C-8142 shall stand confirmed.