

(2015) 06 MAD CK 0302

In the Madras High Court

Case No : Criminal A. No. 411 of 2009 and M.P. No. 1 of 2015

Manoharan and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235, 248, 255, 313, 357
Penal Code, 1860 (IPC) — Section 376, 417, 506(i)
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(i)(x)

Citation : (2015) 06 MAD CK 0302

Hon'ble Judges : P. Devadass, J

Bench : Single Bench

Advocate : Thangavadhana Balakrishnan, for the Appellant; P. Govindarajan, APP, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

P. Devadass, J.—A-1 to A-4 are the appellants herein.

2. A-1 is the son of A-2 and A-3. A-4 is the then President, Kakkalur village in Vikiravandi Taluk in Villupuram District.

3. Before the learned Special Judge under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act/Principal Sessions Judge, Villupuram, they were tried in the Sessions Case in S.C. No. 34 of 2008.

4. Ultimately, they were convicted and sentenced as under:-

The learned Special Judge has directed their sentences to run concurrently. They have paid the fine amounts.

5. The case of the prosecution is this:

(i) PW-1 and A-1 to A-4 belongs to Kakkalur village. A-1 fell in love with PW-1. He was mad after her. PW-1 was led to believe that they were made for each

other, making her to believe that he will marry her, A-1 had raped PW-1.

(ii) PW-1 is an Irula girl, a Scheduled Tribe (Ex.P-4 Community Certificate issued by PW-2, Revenue Divisional Officer, Villupuram). As per Ex.P-3 Community Certificate, A-1 to A-4 are not members of Scheduled Caste and Scheduled Tribe Community. As per Ex.P-7 Certificate then PW-1 was 18 years old.

(iii) Later, there was stiff opposition from A-2 and A-3 for the marriage between A-1 and PW-1. PW-1 wanted justice. She met A-4 and complained to him. He told her since she belongs to Irula 4 Community, her marrying A-1 will bring shame to Kakkalur village. In the circumstances, PW-1 gave Ex.P-1 complaint to Kakkalur police PW-10, Sub Inspector. PW-10 registered this case (Ex.P-5 FIR). Investigation was taken by PW-13 D.S.P./Sub Divisional Officer, Villupuram.

(iv) PW-13 took up his investigation. PW-11, Dr.Pandian examined PW-1 and confirmed that she has been subjected to sexual intercourse. As per Ex.P-6 Certificate, A-1 is capable of performing sexual act. The Investigation Officer after completing his investigation, filed the Final Report before the concerned Court.

(v) The learned Special Judge considering the materials on record and upon hearing both sides, framed charges as against A-1 to A-4. They have not pleaded guilty to the charges.

(vi) To substantiate the charges, prosecution examined PWs-1 to 13, marked Exs.P-1 to P-8.

(vii) The accused were examined on the incriminating aspects in the prosecution evidence under Section 313 Cr.P.C.

(viii) They have denied the offences. They did not adduce defence evidence.

(ix) Appreciating the said evidence, the Trial Court convicted A-1 to A-4 and sentenced them as already stated in paragraph No. 4.

6. The learned counsel for the first appellant/A-1 submits that so far as A-1 is concerned, she is confining her arguments only with reference to the sentence aspect. She would submit that subsequent to the conviction, A-1 married PW-1 on 17.5.2011. They have become happy married couples. A female child born to them brought further happiness to their family. In the circumstances, sending A-1 to jail to serve the sentence virtually separate this happy couples. The child also will be the worst sufferer. Notwithstanding the caste barrier, A-1 and PW-1 have become spouses, PW-1 has been accepted by A-1's family, she is living with them happily. In the circumstances, both the families have compromised the matter. In view of these special circumstances, the learned counsel for A-1 will plead for mercy and the united couples may not be separated.

7. Mr.K.Kumaran, the learned counsel submitted that PW- 1 is present today in Court. PW-1 was identified by the learned counsel. Today, A-2 to A-4 were also present.

8. PW-1 filed separate supporting affidavit. She also stated before this Court that she is leading happy married life with A- 1 with their child. PW-1 stated that she is being happily taken care of by A-1 and her in-laws, and relatives.

9. With respect to the conviction under Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the learned counsel for the appellants submitted that it is legally unsustainable because the ingredients for the offence has not been established.

10. The learned counsel for the appellants also contended that the evidence adduced and the nature of the act complained of would not warrant a conviction under Section 506(i) IPC.

11. The learned Additional Public Prosecutor submitted that the record as well as the statement of PW-1 who is present today shows that A-1 and PW-1 have married and are living together. There are decisions that in such circumstances, Courts can take a pragmatic view enabling them to continue their happy married life.

12. The learned Additional Public Prosecutor also submitted that as regards other offences as well as as regards A-2 to A-4 referring to the evidence adduced, the Trial Court has recorded the conviction and accordingly punished them.

13. I have anxiously considered the rival submissions and perused the judgment and evidence on record.

14. A-1 and PW-1 were lovebirds. The evidence of PW-1 coupled with medical evidence very clearly establishes the offences under Sections 376 and 417 IPC as against A-1. In the circumstances, we are not to disturb the findings recorded as against A-1 under Sections 376 and 417 IPC.

15. The evidence of PW-1 is that when she met the accused and pleaded for her marriage with A-1, they have stated to have told her that if A-1 marries PW-1, a Irula Community girl, it will bring shame to Kakkalur village. It is pertinent to note that the evidence of PW-1 is that she met them at their house.

16. The essential requirement for an offence under Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is that there must be intentional insulting of a member of Scheduled Caste/Scheduled Tribe and that too in any place within public view.

17. Now in this case, even as per the prosecution version, the alleged incident took place at the residence. Therefore, the charge under Section 3(i)(x) of the said Act is not made out.

18. A-2 is the father of A-1.

19. The learned Special Judge took the evidence of PW-1 that A-2 scolded her mentioning her caste name expressing his displeasure in her wish to marry his son/A-1 and also used some obscene words against PW-1 to convict him under

Section 506(i) IPC.

20. The requirement for an offence under Section 506(i) IPC dealing with criminal intimidation is as such that it should be within an intention to threaten. Mere words, words without any intention is not sufficient. There are lethal words. Mouth is the most dangerous weapon. It is the source which makes a person a hero and also a zero. But, it is not equivalent to a lethal weapon. Lethal words cannot be exchanged for lethal weapons.

21. Now in this case, even taking the evidence of PW-1 as such, with reference to the usage of the alleged demeaning words it will not be criminal intimidation. Thus, an offence under Section 506(i) IPC is not made out as against A-2.

22. Now the result of our deliberations is that A-1 to A-4 got clean chit from the charges under Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and A-2 is exonerated from the charge under Section 506(i) IPC.

23. Now A-1 stood convicted and confirmed for offences under Sections 376 and 417 IPC.

24. As already said A-1 and PW-1 were lovers. After his conviction, PW-1 says that she has forgiven him. Accepted him as her husband. She is living happily with him in their family. She also says that if A-1 is sent to jail, she alone has to go to see him at the jail along with her child.

25. In her affidavit, PW-1 had stated as under:-

"(i) I submit that after the above incidents the above named Accused 1-4 regretted for the bitter incidents which took place and approached my parents to ensure a happy and peaceful end. In result of which myself and the Accused No. 1 Manogaran got married at our residence on 17.5.2011 with the blessings of the parents, elders and friends of both the families.

(ii) I submit that out of our wedlock, we begot a female child and named her Manisha who is two years old now.

(iii) I submit that I am leading a peaceful and happy married life with my husband Manogaran and my in-laws Murugaiyan and Chinnaponnu as a joint family. My husband and my in-laws are so caring towards me and our child Manisha by all means.

(iv) I submit that when things are thus I am very much in need of my husband and my in-laws who are the appellants/accused in the above case. If the appellants are penalised, I would lose my family and my condition along with my daughter's would become very pathetic.

(v) I submit that I am fully dependent on my husband and my in-laws and I sincerely opine that there is no point in proceeding with the above case any further since I am married and living with the Accused-1 and the Accused 2 and

3 are my in-laws and the Accused-4 is our well wisher and a good family friend."

26. A-1 has married PW-1. Their marriage Certificate, marriage photo, child's Birth Certificate and the statement of PW-1 confirms her assertion. A-2 to A-4 who are present today also affirms this.

27. In the circumstances, what shall we do with A-1. Whether he is to be sent to jail or allowed to live with his wife/PW-1 and their daughter.

28. It is crime and punishment. Crime and punishment are not one and the same. "Crime" comes first then comes "punishment". Crime is an abnormal/deviant behaviour. It will be crime when it is prescribed as such under a Penal Law.

29. Recording of convictions shall be in accordance with the ingredients of the penal provisions, which must be established beyond all reasonable doubts.

30. That part of law which deals with punishments is "Penology". That part of law which deals with victims of crime is "Victimology". It is also a study of "Sociology".

31. Penological considerations must involve sociological considerations. This is also an objective behind Sections 248, 235, 357 Cr.P.C. It can also be stretched to Section 255 Cr.P.C. They give much scope for the trial Judges and the Appellate Court Judges exercising criminal jurisdiction, playing a pragmatic role in rendering justice in proportion to the offence established. It is a matter of sentencing policy also. There is no cut and dried formula or golden scale to weigh them. In appropriate and fit cases pragmatic approach is needed.

32. Long long ago, we have bid farewell to the archaic Hammurabi's Code of Penology namely, "an eye for an eye", "tooth for a tooth". There is vast difference and distance between retributive justice and reformative justice.

33. Human mind (of Judges) cannot be replaced by feeling less inanimate computers to award sentence.

34. Sociological considerations must play a role while making penological considerations. The factors that the convicted is the only source of income and support to the family, his dependents, effect of crime on the Society, the future of the accused and nature of the accused, nature of the act committed, possibility of reformation, repentance, redemption also to be taken into account before awarding sentence.

35. Sections 235, 248 Cr.P.C. are not mere empty formalities. It empowers the Court to play a significant role while awarding appropriate sentence.

36. Now A-1 has married PW-1. This happy incident took place after the conviction recorded by the Trial Court. A-1 and PW-1 have become life partners. They have a female child. In such circumstances, there is no point in depriving PW-1 and her child, their hard earned happiness by sending A-1 to jail. That is

not the hallmark or end of justice. Justice always to be tempered with mercy. The majesty of justice lies in its magnanimity.

37. Under similar circumstances in Ravindra Vs. State of Madhya Pradesh(2015) 3 AD 640 : AIR 2015 SC 1369 : (2015) CriLJ 1943 : (2015) 2 JCC 1152 : (2015) 2 RCR(Criminal) 124 : (2015) 2 SCALE 693 : (2015) 4 SCC 491 : (2015) 2 SCJ 746 when the accused who was convicted under Section 376 IPC has married the victim as in our case and there was compromise between them as before us, the Hon"ble Supreme Court referring to the proviso to Section 376 IPC considered this a special reason to reduce the sentence to the period already undergone. Similar view also has been taken in Wasim Vs State {CDJ 2014 DHC 2901}].

38. It is pertinent to note that in Ravindra (supra), the Hon"ble Supreme Court took note of the human sentiments and human elements.

39. Courts are made of sands and bricks. But are manned by human beings to render justice.

40. In the facts and circumstances, considering the transformation of A-1 and marrying PW-1 with the support of one and all and becoming the father of a child and leading a happy married with PW-1 and the child as a special reason to reduce the sentence to the period already undergone.

41. In the result,

(i) This Criminal Appeal is allowed in part;

(ii) The conviction of A-1 under Sections 376 and 417 IPC are confirmed;

(iii) His sentence under Sections 376 and 417 IPC are modified to the period already undergone;

(iv) A-1 to A-4 are acquitted from the charges under Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act;

(v) A-2 is acquitted from the charge under Section 506(i) IPC; 15

(vi) The fine amounts paid by A-2 to A-4 shall be refunded.

(vii) Consequently, connected M.P. No. 1 of 2015 is closed.