

Bail Slip

The Appellants/Accused Nos.1&2 namely, 1.Periyasamay, S/o. Ganapathiyappan, aged about 42 years 2. Thangam @ Ramasamy, S/o. Ganapathiyappan, aged about 38 years were directed to be released on bail as per order of this court dated 14.07.2008 made in MP.NO.1 of 2008 in CrI.A.No.459 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10-07-2015

CORAM:

THE HONOURABLE MR. JUSTICE P.DEVADASS

Criminal Appeal No.459 of 2008

1.Periyasamy
2.Thangam @ Ramasamy ... Appellants/A-1 & A-2
vs.

State Represented by:
The Deputy Superintendent of Police,
Avinashi Sub Division,
Kovilpalayam Police Station,
Coimbatore District. ... Respondent/Complainant

This criminal appeal is filed under Section 374(2) Cr.P.C., against the judgment of the learned Special Judge/Principal Sessions Judge, Coimbatore made in S.C.No.28 of 2007 by judgment dated 3.6.2008 and to set aside the judgment.

For Appellants : Mr.A.Raghunathan,
Senior Counsel for
Mr.Su Srinivasan.

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

J U D G M E N T

A-1 and A-2 in the Court of the learned Special Judge/Principal Sessions Judge, Coimbatore are the appellants herein.

2. They were prosecuted before the said Judge for their alleged commission of offences under Sections 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [hereinafter SC&ST (P.A.) Act] and Sections 324 and 448 of IPC. The Trial Court acquitted them from the charge under Section 448 IPC, however, convicted and sentenced them with regard to the remaining charges as under:

Accused	Conviction	Sentence
Periyasamy/A-1	(i) Section 3(1)(x) of SC&ST (P.A.) Act; (ii) Section 324 IPC;	(i) 1 year RI and fined Rs.1,000/- in default 2 months RI; (ii) 1 year RI and fined Rs.1,000/- in default 2 months RI;
Thangam @ Ramasamy/A-2	(i) Section 3(1)(x) of SC&ST (P.A.) Act; (ii) Section 324 IPC;	(i) 1 year RI and fined Rs.1,000/- in default 2 months RI; (ii) 1 year RI and fined Rs.1,000/- in default 2 months RI;

The learned Special Judge directed their sentences to run concurrently.

3. The case of the prosecution runs as under:

(i) PW-1 Murugan is residing in Jeeva Nagar in Kaikolapalayam in Coimbatore District. He belongs to Hindu Arunthathiar Community, a Scheduled Caste (See Ex.P-8 Community Certificate issued by PW-10, Santhanam, Tahsildar). A-1 and A-2 are brothers. They belongs to Kongu Velalar Community, a Backward Community (See Exs.P-7 and P-8 Community Certificate issued by PW-10). They also belongs to the same village;

(ii) On 24.4.2007, at about 9 p.m., A-1 and A-2 barged into PW-1's house, armed with MOs-3 and 4 sticks. They have beaten him. In order to insult him, they have called him by his caste. This has been witnessed to by PWs-2 to 4 viz., Magali, Rangasamy, Susila who are wife, son and daughter-in-law respectively of PW-1. PW-5 Pappathy, sister of PW-2 also witnessed the occurrence;

(iii) PW-1 was taken to Government Medical College Hospital, Coimbatore. On the same day, at about 10.15 p.m., at the said Hospital, PW-9, Dr.Saravana Kumar treated PW-1. Seen lacerated injuries on his scalp. They are simple in nature (See Ex.P-6 Accident Register copy);

(iv) On intimation from the police-outpost attached to the said Government Hospital, PW-11, Dhanapal, Inspector, Kovilpalayam, visited the Hospital. He received Ex.P-1 complaint from PW-1 and registered this case for offences under Sections 448, 324 IPC read with Section 3(1)(x) of SC&ST (P.A.) Act (See Ex.P-10 FIR). He sent the copy of the FIR to Superior Officers.

(v) On the same day, PW-15, Subramaniam, D.S.P., Avinashi Sub Division, took up his investigation. At about 5.30 p.m., he visited the scene place. In the presence of PWs-7 and 8, Velusamy and Subramani, he prepared Ex.P-12 Observation Mahazar. Drew Ex.P-13 Rough Sketch. In their presence, he recovered MOs-3 and 4 sticks near a lamp post under Ex.P-14 Seizure Mahazar. He examined the witnesses and recorded their statement;

(vi) At the said Hospital, from PW-1, PW-15 recovered his blood-stained dothi (MO-1) and shirt (MO-2) in the presence of PW-13 Balasubramaniam and one Arumugam;

(vii) On 26.4.2007, at about 9 a.m., near the Bus-Stop, at the Kalapatty Four Road, PW-15 arrested A-1. He sent him to the Court for judicial remand. He obtained Accident Register copy for PW-1 from the Hospital. He obtained Community Certificates for PW-1, A-1 and A-2.

(viii) In the meanwhile, on the orders of the Hon'ble High Court, A-2 came out on bail. Concluding his investigation, on 10.9.2007, PW-15 filed the Final Report for offences under Sections 448, 324 IPC and Section 3(1)(x) of SC & ST (P.A) Act, 1989 as against A-1 and A-2 before the jurisdictional Court.

4. After satisfying the requirement under Section 207 Cr.P.C., the Committal Magistrate committed the case to the Court of the Special Judge/Special Court under SC&ST (P.A.) Act/Principal Sessions Judge, Coimbatore under Section 209 Cr.P.C. The learned Special Judge took cognizance thereon.

5. Upon hearing both and on consideration of the Final Report and the documents attached thereto, the learned Special Judge framed charges as against A-1 and A-2 under Sections 448, 324 IPC and 3(1)(x) of SC&ST (P.A) Act, 1989. The accused have denied the charges.

6. In the circumstances, prosecution examined PWs-1 to 15, marked Exs.P-1 to P-14 and exhibited MOs-1 to 4.

7. On the incriminating aspects in the prosecution evidence, when the accused were examined under Section 313 Cr.P.C., they have denied the offences. They did not let in defence evidence.

8. Appreciating the arguments of both side and the evidence adduced, the Trial Court convicted and sentenced them, as already stated in paragraph-2.

9. Mr.A.Raghunathan, learned Senior Counsel for the appellants submitted that prosecution has miserably failed to establish the charges leveled against the accused beyond all reasonable doubts. PWs-1 to 5, the alleged ocular witnesses are closely related. They are highly interested. There is no independent witness. In the circumstances, the testimony of PWs-1 to 5 does not deserve credence. There are very many material contradictions in their evidence also. The medical evidence do not corroborate the evidence of ocular witness.

10. The learned Senior Counsel for the appellants further contended that from the evidence of PW-1, it is seen that on the occurrence day at the Hospital, a Police Head Constable received FIR from PW-1, however, after the pressure of the caste leaders that FIR was suppressed and the present FIR with concocted allegation has been obtained from PW-1. Thus the true version of the occurrence has been suppressed. The FIR in this case is not free from doubt.

11. The learned Senior Counsel for the appellants further contended that as per Section 3(1)(x) of SC&ST (P.A.) Act, 1989, the occurrence should have been taken place in a place within public view, however, FIR and the evidence of the material witnesses would show that the alleged occurrence did not take place in such a place and it took place inside PW-1's house. Since one of the main ingredients for the said offence has not been established, this charge goes away.

12. In this regard, the learned Senior Counsel also placed reliance on Madanlal Jaiswal vs. State of Chhattisgarh {CDJ 2013 Ch.HC 002 = 2013 CrI.J 510}.

13. The learned Senior Counsel for the appellants further contended that as per Rule 7 of the Rules framed under SC&ST (P.A.) Act, 1989, investigation has to be done by a specially empowered Officer not below the rank of a Deputy Superintendent of Police and the investigation also has to be completed within 30 days. However, in this case, PW-15 D.S.P. was not so specifically empowered and he has also filed the Final Report long after 30 days. Thus the mandatory Rules have been violated and the entire criminal proceedings is vitiated.

14. In support of his submissions, the learned Senior Counsel cited the following Rulings:

(i) Mrs.Mariamammal vs. State of Tamil Nadu {1998 (1) MWN (Cr.) 349};

(ii) Sambasivam and Another vs. State {2007 (1) MWN (Cr.) 69};

(iii) Sekar and others vs. Deputy Superintendent of Police, Pudhuchatram {CDJ 2011 MHC 5916}.

15. On the other hand, the learned Additional Public Prosecutor submitted that PW-1, a member of the Scheduled Caste has been intentionally insulted by A-1 and A-2, who are non-Scheduled Caste members. They have also beaten him. PW-1, the injured-cum-eyewitness and others deposed as to the occurrence elaborately. PW-1 has been corroborated by PWs-2 to 5 as well as by the Doctor. Further PW-15, who is a Sub Divisional Officer in the rank of a D.S.P., an experienced Police Officer, has conducted the investigation, collected evidence, filed the Final Report. It cannot be faulted. In the circumstances, the Trial Court has rightly convicted the appellants and punished them according to law.

16. I have anxiously considered the rival submissions, perused the evidence and the materials on record, gone through the impugned judgment and the decisions cited by the learned Senior Counsel for the appellants.

17. Now the question is whether the prosecution has established the charges under Section 3(1)(x) of SC&ST (P.A.) Act, 1989 and Section 324 of IPC framed as against the appellants beyond all reasonable doubts.

18. The main allegation as against the appellants is that they have committed an offence under Section 3(1)(x) of SC&ST (P.A.) Act, 1989. This Section runs as under:-

"Section 3 of Scheduled Castes and Scheduled Tribes (PA) Act 1989 (it may hereinafter be referred to as the Act) deals with the punishment for offences of atrocities. Sub-Section (1) to Section 3 enacts as under:

'Whoever not being a member of a Scheduled Caste or a Scheduled Tribe.-

Clause (x) to Sub-Section (1) of Section 3 of the Act reads as follows:-

"Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

19. In Sekar and Others vs. D.S.P., Pudhuchatram {CDJ 2011 MHC 5916}, this Court brought out the ingredients of the said offence as under:-

"20. To attract the proviso to Clause (x) to Sub-Section (1) of Section 3 of the Act, the following ingredients are very much essential:

1. The person who is accused of shall not be a member of the Scheduled Caste or Scheduled Tribe;

2. The person who is aggrieved shall be a member of the Scheduled Caste or Scheduled Tribe;

3. Criminal intention to insult or intimidate or to humiliate;

4. The occurrence should have taken place in any place within public view.

21. Clause (x) to Sub-Section (1) of Section 3 of the Act itself is very clear that whoever not being a member of Scheduled Caste or Scheduled Tribe intentionally insults or intimidates with intentionally or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

22. Hence, the existence of mens rea or criminal intention to constitute an offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is very essential. If there is no intention, no offence will constitute. And that is why, the Legislators have carefully employed the words "intentionally insults".

23. The test of criminality depends upon the presence of criminal intent. The maxim "actus non facit reum, nisi mens sit rea" is then, as true here as it is in England. The above maxim conveys the meaning "the fact itself does not make a man guilty unless his intention was so".

20. In this case, PWs-1 to 5 are closely related as they are wife, son, daughter-in-law and sister-in-law of PW-1. Apart from them there is no independent witness in this case. Merely on account of PWs-1 to 5 being interested, their evidence cannot be brushed aside, however, in such circumstances when especially there is no independent witness, the Court is required to approach and weigh their credence with much care and caution.

21. It is established by recorded evidence that PW-1 is member of a Scheduled Caste, while A-1 and A-2 are non-Scheduled Caste members. On 24.4.2007, at about 9 p.m., as per the evidence of PW-1, A-1 and A-2 have called him by his caste intending to insult him.

22. As already stated such an occurrence should have been taken place in a place within public view. [See Section 3(1)(x) of SC&ST (P.A.) Act, 1989, also See Madanlal Jaiswal vs. State of Chhattisgarh {CDJ 2013 Ch.HC 002 = 2013 CrI.J 510, and also see Asmathunnisa vs. State of A.P.(CDJ 2011 SC 332)}].

23. In his evidence, PW-1 had stated that A-1 and A-2 came inside his house and beaten him with sticks, thereafter pulled him out and called him by his Caste name. In his complaint Ex.P-1, PW-1 had stated that the appellants came inside his house and beaten him with Casuarina sticks. PW-2, wife of PW-1 had stated that the accused have beaten her husband inside the house. However, PWs-4 and 5 have stated that after beating PW-1, the accused have forcibly took him out of the house and called him by his Caste name.

24. It is pertinent to note that Ex.P-10, FIR which set the criminal law in motion is the earliest document connected with this case. In FIR it is mentioned that the accused have beaten PW-1 with casuarina sticks in the house. However, before the Trial Court some of the witnesses such as PWs-2 and 3 have stated that after the beatings were over, the accused have forcibly took PW-1 outside the house. Thus, there is improvement in the prosecution evidence and that is not found in the FIR.

25. Considering the above aspects, it is seen that the prosecution had not established that the alleged occurrence had taken place in a place within public view. Thus one of the essential ingredient for the offence under Section 3(1)(x) of SC&ST (P.A.) Act, 1989 is not satisfied.

26. In 1995, in pursuance of Section 23 of the SC&ST (P.A.) Act, 1989, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 has been framed. Its Rule 7 relevant for our purpose runs as under:-

"7. 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."

27. In view of the nature of the offence, Higher Officials namely an Officer not below the rank of a Deputy Superintendent of Police has been specified in the Rules, to investigate this type of offences. Further Rule 7(1) specifically mentions that the D.S.P. should have specified past experience etc. Further, as per Rule 7(2), the investigation has to be completed within 30 days.

28. In *Mrs. Mariammal vs. State of Tamil Nadu* {1998 (1) MWN (Cr.) 349}, this Court interpreted the said Rule as under:-

"18. It follows from this Rule that it is mandatory in the case of an offence complained of under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 that the investigation should be done by a Deputy Superintendent of Police and not the Inspector of Police, whatever may be the allegation as true or otherwise. In other words even if the allegations in the FIR are not true, even then the case can be investigated by the Deputy Superintendent of Police and not by the Inspector of Police."

29. In *Sambasivam and Another vs. State* {2007 (1) MWN (Cr.) 69}, this Court had occasion to go elaborately into the significance of the said Rule 7(1). In *Sambasivam* (supra), the Court observed as under:-

"15. Rule 7(1) of the Rules reads:

"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."

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 officer and this is possible only if the individuals are considered separately. Rule does not say that all the Deputy Superintendents 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 overlooked, 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 form, which is not the import or purport of Rule 7, as read from its proper perspective.

17. The learned counsel for the appellants, inviting my attention to a decision of the Division Bench of the Andhra Pradesh High Court in Viswanadhula Chittibabu vs. State of A.P. (2002 (4) Andhra Law Times Reports 456), would submit that the investigation done by any person, not authorised under Rule 7 of the Rules, should be treated as prejudice caused to the accused, since Rule 7 is mandatory and not directory. It is observed in the above Ruling:

"The Act was enacted in the year 1989, whereas the Rules were framed in the year 1995, under Section 23 of the said Act. There was a delay of about six years in framing the Rules. It has to be considered why the Government framed this Rule. According to our logic, the Government experienced that the Act is being misused and therefore, felt that under such Acts, the investigation has to be done by a responsible Senior Officer and therefore, they chose Dy.S.P. to make an investigation. This Rule does not provide that all Dy.S.Ps. can investigate into the matter but provides that the Dy.S.P., named by the State Government or Director General of Police or Superintendent of Police has to nominate and select a Dy.S.P., with integrity and experience to investigate into such offences, which will prevent the misuse of the Act, and therefore, the provision contained in Rule 7 of the said Rules has to be interpreted as mandatory. In some of the rulings cited, their Lordships held that if there were procedural defects, the trial would not vitiate. The procedure means a procedure, which is adopted by the Court. When the investigation has to be done by a Police Officer not below the rank of Dy.S.P. under Rule 7 of the said Rules framed under Section 23 of the said Act, it has some meaning. It is not the procedural defect, it is inherent defect in making the investigation and that would vitiate the entire trial."

The said reasonings are legally sound and I should follow, as concluded by me in the previous paragraph.

18. The same view was taken by this Court also in H.THENMOZHI vs. INSPECTOR OF POLICE, P.R.C.UNIT, St.THOMAS MOUNT POLICE STATION, CHENNAI AND ANOTHER [(2006) 2 MLJ (Cr1.) 463], wherein it is stated that the investigation done by the Inspector of Police vitiates the entire proceedings and the accused is entitled to an acquittal. In the case involved in the above decision, as seen from the judgment, the investigation has been done by the Inspector of Police and the same has been forwarded to the DSP, to investigate the matter further, probably considering the fact, the investigation by the Inspector of Police goes to the root of the matter. This Court, considering the above facts, took the view that the same would vitiate the

entire proceedings, giving acquittal, which should be followed by me also, since I am in conformity with the view expressed by the learned Judge."

30. Recently, in Sekar and others vs. D.S.P., Pudhuchatram {CDJ 2011 MHC 5916}, this Court while referring to the said Rule 7(1) reiterated the its earlier views which we have seen already.

31. In Asmathunnisa vs. State of A.P. (CDJ 2011 SC 332), referring to the said Rule 7(1) when the Investigating Officer namely D.S.P. is not the person as contemplated in the Rules, in other words, not specifically empowered referring to his past experience, the Apex Court held him an incompetent Police Officer to investigate such an offence.

32. Now considering the above Rule position and the decisions on the point, there cannot be quarrel over the proposition that it is not all the D.S.Ps. even Police Officers above him in rank cannot investigate the offences alleged to have been committed under SC&ST (P.A.) Act, 1989 unless they are specifically empowered by the Government or by the Superintendent of Police (in case of Metropolitan Cities, the Deputy Commissioner) taking into account their past experience and sense of ability etc.

33. The consequence of investigation done by a Police Officer not below the rank of a Deputy Superintendent of Police who has not been so empowered as mandated in Rule 7(1) has been pointed out by this Court in Sambasivam (supra) that the entire proceedings is vitiated.

34. Now in this case, PW-15 Subramaniam, D.S.P., Avinashi Sub Division took up his investigation on 25.4.2007. No materials or records to show that he has been empowered to undertake investigation with the required authorisation as contemplated under Rule 7(1).

35. It is also not the case of the prosecution that with reference to PW-15, the mandatory requirements in Rule 7(1) has been complied with. Thus, the very investigation by PW-15 is vitiated. Consequently, the entire criminal proceedings is vitiated.

36. As per Rule 7(2), the investigation has to be completed within 30 days. Now in this case PW-15 took up his investigation on 25.4.2007. He has filed the Final Report before the concerned Court only on 10.9.2007. It is far beyond 30 days. The Act gave him 30 days, but he took more than 3 months to complete the investigation.

37. In view of the large scale atrocities on vulnerable peoples on account of caste discrimination and in pursuance of Constitutional mandate, SC&ST (P.A.) Act, 1989 was passed.

Thereafter, after 6 years in order to have effective implementation of the Scheme under the Act in exercise of its Rule making power conferred under Section 23 of the Act, the Government framed the Rules, namely, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and like any other Penal Statute which creates offence although the general procedure for investigating the offences have been delineated in the Old Code of Criminal Procedure, 1898 and also in the new Code of Criminal Procedure, 1973 certain distinct provisions have been made in SC&ST (P.A.) Act and also in the Rules framed thereunder.

38. One distinctive feature is that in Rules 7(1) and 7(2), the Government in its wisdom considered that in order to have effective implementation of the Act and to put an end to offences arising out of Caste discrimination and as there is possibility of false implication and to prevent one sided investigation, to prevent any cover-up operations, to prevent any unfair investigation and to ensure fair investigation, it has engrafted Rule 7(1) and also decided to entrust the investigation to certain higher level Officers, namely, Police Officer not below the rank of D.S.Ps. and further it has been specifically made that such Officer must be an Officer having the required past experience and also of good stature and fiber. Such a sanguine provision has been made in the said Rule itself.

39. Long back in 1945 in King Emperor vs. Khawaja Nazir Ahmad {AIR 1945 PC 18}, the Hon'ble members of the Judicial Committee of the Privy Council held that in India the process of investigation is the province of police, however, when the investigation has been done in breach of any mandatory provisions of law or Rules prescribed thereunder or done malafidely the Court will interfere.

40. Now to investigate a special type of offence under SC&ST (P.A.) Act, which is a social crime certain mandatory statutory provision has been made to undertake investigation and complete the investigation within a time frame when that is violated, the Court has to set at naught such process of investigation, that is how in Sambasivam (supra) this Court held that any investigation done in violation of Rule 7(1) will vitiate the entire criminal proceedings. Thus, the principles laid down in the said decided cases squarely applies to the facts of this case.

41. In this case, Ex.P-1 complaint has been lodged by PW-1 Murugan. Based upon that Ex.P-10 FIR has been registered. PW-1 Murugan set the criminal law in motion. As per the printed FIR, PW-11 Dhanapal, Inspector of Kovilpalayam Police Station, registered FIR based on Ex.P-1 statement received from PW-1 on 24.4.2007 at 10.15 p.m., at the Government Medical College Hospital, Coimbatore.

42. FIR in a criminal case is an important document. Although it is not a substantive piece of evidence, it sets the criminal law in motion. It is like blue print for a building. If the basement of the building is not alright, then the building will collapse. Likewise if the FIR is not free from doubt, the very genuineness of the prosecution case built in the FIR is open to doubt, consequently there will be casualty of the prosecution case becoming a casualty unless the doubt has been cleared by the prosecution.

43. Now in the present case, as per the prosecution version, the FIR has been recorded by PW-11 at the Hospital on 25.4.2007 from PW-1. In his chief-examination, PW-1 had stated that after the occurrence an Head Constable visited him at the Hospital, recorded his statement and also obtained his thumb impression. In his cross-examination, PW-1 also stated that subsequently the Inspector of Police visited him at the Hospital, recorded his statement and obtained his signature. PW-1's evidence shows that already FIR has been obtained from PW-1 by an Head Constable besides that subsequently PW-11 Inspector also obtained a complaint from him. Thus, in such circumstances, the earliest version as to this case made by PW-1 to the Head Constable has been suppressed.

44. Thus in this case the FIR is fabricated. It does not reflect the true and earliest version. Thus, the possibility of embellishment cannot be ruled out. Thus the FIR in this case is not free from doubt. Consequently, the case of the prosecution projected through its witnesses with reference to the said FIR shaken the credit worthiness of PWs-1 to 5.

45. PW-1 has been examined by PW-9 Dr.Saravana Kumar and he issued him Ex.P-6 Accident Register copy. PW-9 noticed some abrasions on his scalp. PW-9 stated that PW-1 had stated to him that three known persons have assaulted him. The oral evidence of PW-1 does not corroborate the medical evidence. When there is conflict between the oral evidence and the medical evidence, the oral evidence will prevail. Medical evidence has been pressed into service in a criminal case for the purpose of corroboration. Medical evidence cannot be elevated to the status of a substantive piece of evidence. As a corroborative piece, medical evidence has been introduced to test the veracity of oral evidence of injured person. But under certain circumstances inconsistency between the evidence of ocular witness/injured/affected witness with that of the medical evidence may result in doubting the very credit worthiness of the ocular witness. Now in this case, in view of the fact that the FIR is not free from doubt, the variation as to the evidence of PW-1 and the medical evidence of PW-9 also assumes signal importance.

46. Now on a survey of the evidence adduced in this case and the breach of Rule 7, supra, in the light of the submissions on both side, I have no hesitation to hold that the prosecution has not

established the charges framed against the appellants beyond all reasonable doubts. Consequently, they are entitled to the benefit of doubts.

47. In view of the foregoing, this Criminal Appeal is allowed. The conviction recorded and the sentence of imprisonment and fined imposed on the appellants in the Special Sessions Case No.28 of 2007 on 3.6.2008 by the learned Special Judge under SC&ST (P.A.) Act/Principal Special Judge, Coimbatore are set aside. Fine amount shall be refunded to the appellants.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

Copy to:

- 1.The Special Judge under SC/ST (PA)
Act/Principal District and Sessions Judge,
Coimbatore.
- 2.The Deputy Superintendent of Police,
Avinashi Sub Division, Kovil Palayam, Coimbatore.
- 3.The Superintendent, Central Prison, Coimbatore.(Induplicate for
Communication to detenu)
- 4.The Public Prosecutor, High Court, Madras.

SAI (CO)
EU 22.07.15

सत्यमेव जयते

Cr1.A.No.459 of 2008

WEB COPY