

BAIL SLIP

The Appellant/Accused was directed to be released on bail as per order of this Court dated 10.10.2007 and M.P.No.1 of 2007 in C.A.No.926/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.926 of 2007

Sivasubramaniam ... Appellant/Accused

v.

State rep. by
Deputy Superintendent of Police
Udumalpet Police Station
Coimbatore District.
Crime No.249 of 2006. ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) CrPC. against the judgment of conviction and sentence dated 20.09.2007 in Spl.S.C.No.34 of 2006 on the file of the learned Principal Sessions Court (Special Court), Coimbatore.

For Appellant : Mr.S.N.Arun Kumar for
Mr.N.Balakrishnan

For Respondent : Mr.V.Arul
Govt. Advocate (Crl.side)

J U D G M E N T

The Criminal Appeal arises out of the judgment of conviction and sentence dated 20.09.2007 in Spl.S.C.No.34 of 2006 on the file of the learned Principal Sessions Court (Special Court), Coimbatore, whereby the accused was convicted and sentenced as follows:

offence under Section	Sentence
3(1)(x) of SC and ST (Prevention of Atrocities) Act, 1989	To undergo six months rigorous imprisonment and to pay a fine of Rs.1,000/- in default in payment to undergo four weeks simple imprisonment.
341 IPC	To pay a fine of Rs.500/- in default in payment to undergo 1 week simple imprisonment.
323 IPC	To pay a fine of Rs.1,000/- in default in payment to undergo four weeks simple imprisonment.

2.The case of the prosecution based on the prosecution witnesses is as follows:

(i)On the side of the prosecution, P.W.1 to P.W.13 were examined and Exs.P1 to P9 were marked.

(ii) P.W.1/Karuppaiya is the resident of Alampalayam and he is doing false hair business and he is also used to go to the place to capture dove in the well. On 16.12.2005 at about 9.00 a.m., when P.W.1 was in his house, P.W.9/Chellamuthu gounder came there and told that Maniyakarar has called him. When he has gone along with P.W.9, P.W.9 has left him after reaching some distance. The accused, who is the son of Maniyakarar came there and they went to kaatu salai, at that time, the accused fisted on his chest and due to the said impact, P.W.1 fell down unconscious. He regained conscious after half an hour and told to Maniyakarar that he did not commit any wrong and as to why they have beaten him. Maniyakarar told that P.W.1 committed theft by placing some person. P.W.1 told that he along with his son-in-law came for capturing dove in the garden next to accused house and since no dove was there, they went to their house. Then Maniyakar and his son had taken P.W.1 to Chavadi and had beaten him in the presence of the villagers, but they could not come forward to help him and they are only watching. P.W.1 was kept in the Chavadi from 11.00 a.m. to 7.00 p.m. Thereafter, P.W.1's wife Panchavarnam/P.W.2, Son-in-law Murugan/P.W.6, Dhandapani/P.W.7 and Ravi/P.W.8 came there and took P.W.1 to Udumalpet Government Hospital at 10.00 p.m. He was admitted in the hospital as an in-patient and on the next day, he gave Ex.P1 complaint.

(iii)P.W.3/Dr.Tamilmani, Udumalpet Government Hospital, treated P.W.1 and gave EX.P2/wound certificate, in which, it is stated as follows:

(i)A contusion of 4 X 3 cm on right side of the chest.

(ii) Nail marks over right side of the chest.
He opined that the injuries sustained by P.W.1 are simple in nature.

(iv) On 17.12.2005 at about 7.00 a.m., P.W.12/Vijayan, Sub-Inspector of Police, went to Udumalpet Government Hospital and recorded Ex.P1 complaint given by P.W.1. He registered a case in Crime No.249 of 2005 under Sections 3(1)(x) of SC and ST (Prevention of Atrocities) Act, Sections 341 and 323 IPC and prepared Ex.P7 F.I.R.

(v) On 17.12.2005, P.W.13/Gopal, Deputy Superintendent of Police, took up the case for investigation and went to the place of occurrence and prepared Ex.P8 observation mahazar and drew rough sketch Ex.P9. He took steps to obtain the community certificates of the accused and P.W.1.

(vi) On the requisition made by the Deputy Superintendent of Police, P.W.4/Pandiarajan, Deputy Tahsildar and P.W.5/Sundarraaj, Tahsildar, gave Exs.P3 and P4/community certificates of the accused and P.W.1 respectively.

(vii) Then P.W.13 examined the witnesses and recorded their statements. On 05.03.2006, P.W.13 after completing investigation, filed a charge sheet against the accused.

3. The Trial Court placed the incriminating evidence before the accused under Section 313(1)(b) of Cr.P.C. and the accused denied the same in toto. On the side of the defence, Ex.D1 was marked. After considering the oral and documentary evidence, the trial Court convicted and sentenced the accused as stated above. Aggrieved over the same, appellant/accused has preferred this appeal.

4. Challenging the judgment of conviction and sentence passed by the trial Court, learned counsel for the appellant/accused has raised the following points for consideration:

(i) No independent witness was examined. P.W.7 to P.W.11 turned hostile.

(ii) Ingredients of Section 3(1)(x) of SC and ST Act and Section 341 IPC have not been made out.

(iii) There is contradiction between ocular and medical evidence.

The trial Court without considering the above aspects erroneously convicted the appellant/accused and hence, he prayed for allowing the appeal.

5. Resisting the same, learned Government Advocate (Crl.side) submits that the evidence of P.W.1 and P.W.2 has clearly proved the ingredients of Section 3(1)(x) of SC and ST Act. P.W.3/Doctor's evidence has also corroborated the evidence of P.W.1.

He further submits that the trial Court after considering all the aspects in proper perspective manner, rightly convicted the appellant/accused. Hence, he prayed for dismissal of the appeal.

6.Considered the rival submissions made on both sides and perused the materials available on record.

7.The case of the prosecution is that the appellant/accused has wrongfully restrained P.W.1 and took him to his farm house and assaulted him and has also taken him to Choultry and assaulted and insulted him before the public as if he belongs to the Scheduled Caste community. P.W.5/Sundarraaj was examined to prove that P.W.1 belongs to Hindu Thombar, which recognised as Scheduled Caste and gave Ex.P4 community certificate. P.W.4/Pandiarajan was examined to prove that accused belongs to Hindu Kongu Vellalar, which recognised as backward class and gave Ex.P3 community certificate. It is not disputed that P.W.1 belongs to Scheduled Caste community.

8.Now this Court has to decide whether the appellant/accused with an intention to cause insult on P.W.1 by abusing his community? P.W.1/Karuppaiah is the victim and P.W.2 is his wife and P.W.6/Murugan is their son-in-law. As per the evidence of P.W.1 and P.W.2, since there was a theft occurred in the house of the accused, police came to their village and made an enquiry. It is to be noted that P.W.7 to P.W.11, who are villagers belonging to the village of P.W.1, turned hostile.

9.P.W.1/victim in his evidence deposed that on the date of occurrence, it is alleged that P.W.9/Chellamuthu told to P.W.1 that Maniyakarar called him. Therefore, P.W.1 has gone along with P.W.9 and on the way, P.W.9 left in lurch, at that time, the appellant/accused accompanied P.W.1. But there is no witness available to corroborate the same. Merely because P.W.1 belongs to Scheduled Caste community, the accused with an intention to insult him is unbelievable. As already stated that except P.W.1, P.W.2 and P.W.6, other witnesses turned hostile. There is no evidence to show that the accused abused P.W.1 by using his community. In such circumstances, I am of the view, ingredients of Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act, have not been made out. Therefore, the conviction and sentence passed by the trial Court under Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act, is hereby set aside and the appellant/accused is acquitted from the charges under Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act.

10.Now this Court has to decide whether the ingredients of Section 341 IPC have been made out? As per the evidence of P.W.1, P.W.9 came to his house and told that Maniyakarar called him. When P.W.1 has gone along with him, on the way, P.W.9 left in lurch and

thereafter, the accused accompanied him and took P.W.1 to his farm house. P.W.1 did not say that the accused has wrongfully restrained him. In such circumstances, I am of the view, ingredients of Section 341 IPC have not been made out. Therefore, the conviction and sentence passed by the trial Court under Section 341 IPC is hereby set aside and the appellant/accused is acquitted from the charges under Section 341 IPC.

11. Now this Court has to decide whether the conviction and sentence passed by the trial Court for offence under Section 323 IPC is sustainable? It is true, Accident Register copy was not marked. P.W.3/Dr. Tamilmani in his evidence opined that injuries sustained by P.W.1 are simple in nature and he gave Ex.P2 wound certificate. In Ex.P2/wound certificate, the following injuries were mentioned:

- (i) A contusion of 4 X 3 cm on right side of the chest.
- (ii) Nail marks over right side of the chest.

In Ex.P2, further it was that 'P.W.1 said to have been assaulted by one known person in Maniyakarar house in Alampalayam by 9.00 a.m.' But P.W.1 in his chief-examination stated that accused had taken P.W.1 to his farm house and then they went to Choultry, wherein accused and his father assaulted him. As per the wound certificate, P.W.1 was assaulted by one known person and as per the evidence of P.W.1, he was assaulted by accused and his father. Furthermore, P.W.3 in his cross-examination fairly conceded that the injuries sustained by P.W.1 are self inflicted. So there is contradiction between ocular and medical evidence. Moreover, there is no evidence to show that appellant/accused herein has caused the above said injuries. In such circumstances, I am of the view, ingredients of Section 323 IPC have not been made out. Therefore, the conviction and sentence passed by the trial Court under Section 323 IPC is hereby set aside and the appellant/accused is acquitted from the charges under Section 323 IPC.

12. As stated supra, the prosecution has miserably failed to prove that the appellant/accused is guilty for offence under Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act, Section 341 and 323 IPC beyond all reasonable doubt. Therefore, benefit of doubt is given in favour of the appellant/accused and he is acquitted from the charges levelled against him. The judgment of conviction and sentence passed by the trial Court is hereby set aside.

13. In fine,

- This Criminal Appeal is allowed by setting aside the judgment of conviction and sentence dated 20.09.2007 in Spl.S.C.No.34 of 2006 on the file of the learned Principal Sessions Court (Special Court), Coimbatore.
- The appellant/accused is acquitted from the charges levelled against him and he is set free.

- The fine amount paid by the accused is ordered to be refunded to him.
- Bail bond executed by the appellant/accused shall stand cancelled.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kj

To

- 1.The Principal Sessions Court (Special Court)
Coimbatore.
- 2.The Judicial Magistrate No.I, Udumalpet
- 3.-do- Thro The chief Judicial Magistrate, Coimbatore
- 4.The Deputy Superintendent of Police
Udumalpet Police Station
Coimbatore District.
- 5.The Public Prosecutor
High Court, Chennai.
- 6.The Record Keeper
Criminal Section, High Court, Chennai.

1 cc to Mr. M.N.Balakrishnan, Advocate, SR.No.9806

Crl.A.No.926 of 2007

tej(co)
pmk.17.3.2015

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