

Bail slip:- The appellants/petitioners viz, Kanniyappan-A1 and Nagappan-A2 were released on bail as per order of this court dated 12.12.2013 and made in M.P.NO.1 of 2013 in CrI.A No.507 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.807 of 2013

1.Kanniyappan
2.Nagappan

... Appellants/A1 and A2

v.

State rep. by
Deputy Superintendent of Police
Villupuram Sub-Division
Villupuram.

... Respondent/Complainant

Prayer:Criminal Appeal filed under Section 374(2) CrPC. against the judgment of conviction and sentence dated 13.11.2013 in S.C.No.253 of 2010 on the file of the Special Judge (Principal Special Judge) Villupuram Division, Villupuram.

For Appellants

: Mr.M.Prabakar

For Respondent

: Mr.Mohamed Riyaz
Govt. Advocate (CrI.side)

J U D G M E N T

The Criminal Appeal arises out of the judgment of conviction and sentence dated 13.11.2013 in S.C.No.253 of 2010 on the file of the Special Judge (Principal Special Judge) Villupuram Division, Villupuram, whereby the accused 1 and 2 were 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 each and to pay a fine of Rs.1,000/- each in default in payment to undergo two months rigorous 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.9 were examined and Exs.P1 to P8 were marked.

(ii) P.W.1/Sathiya, who belong to Erular community, built up a house in a poramboke land situated in Elangadu Village. P.W.2/Ponniammal is the neighbour of P.W.1; P.W.3/Anjali Devli is the step sister of P.W.1; P.W.4/Aathilakshmi is the native of Elangadu Village. One day, accused persons came there and fixed survey stone and when the same was prevented by P.W.1 and others, the accused persons abused her in filthy language referring to her caste and intimidated her. Therefore, P.W.1 lodged Ex.P1 complaint before Valavanur police station.

(iii) P.W.9/Dhatchinamoorthy, Deputy Superintendent of Police, received Ex.P1 complaint and registered a case in Crime No.87 of 2010 under Section 294(b) IPC and Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act and prepared Ex.P6 F.I.R. He took up the case for investigation and on 17.02.2010, at about 3.00 p.m., went to the place of occurrence and prepared Ex.P7 observation mahazar and drew rough sketch Ex.P8. Then he examined the witnesses and recorded their statements. On information, he went to Valavanur Chathiram bus stop and arrested the first accused namely, Kanniyappan and remanded him to judicial custody. He took steps to obtain the community certificates of the accused persons and P.W.1.

(iv) On the requisition made by the Deputy Superintendent of Police, P.W.7/Sethuraman, Revenue Tahsildar, Villupuram and P.W.8/Muthusamy, Revenue Divisional Officer gave Exs.P4 and P5/community certificates of the accused persons and P.W.1 respectively.

(v) P.W.9 after completing investigation, filed a final report against the accused persons under Section 294(b) IPC and Section 3(1)(x) of SC and ST Act.

3.The Trial Court placed the incriminating evidence before the accused persons under Section 313(1)(b) of Cr.P.C. and the accused

denied the same in toto. On the side of the defence, no oral and documentary evidence was marked. After considering the oral and documentary evidence, the trial Court convicted and sentenced the accused 1 and 2 as stated above. Aggrieved over the same, appellants/accused have preferred this appeal.

4.Challenging the judgment of conviction and sentence passed by the trial Court, learned counsel for the appellants/accused 1 and 2 has raised the following points for consideration:

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

(ii) Evidence of P.W.1 to P.W.4 who are related witnesses could not be relied upon. P.W.2 and P.W.4 are the neighbours of P.W.1, P.W.3/Anjali Devi is none other than the second wife of husband of P.W.1. As per their evidence, only three houses are there and they belong to Erular community. There is contradiction between the evidence of P.W.1 to P.W.4. Because, P.W.4 in her cross-examination, has gone to the extent of saying that after hearing noise, she came to the place of occurrence, at that time, the accused persons left the place.

(iii)There was a delay in preferring the complaint. 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 trial Court after considering the evidence of P.W.1 to P.W.4 who are eye witnesses came to the correct conclusion. As per the evidence of P.W.1 to P.W.4, there are three houses in the lake bond, which is a poramboke land and their evidence clearly proved the ingredients of Section 3(1)(x) of SC and ST Act. 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.

Delay:

7.Now this Court has to decide whether the delay in preferring complaint is fatal to the case of prosecution? As per the complaint Ex.P1, the alleged occurrence was said to have taken place

on 16.02.2010 at about 7.00 a.m. But Ex.P1 complaint was lodged on 17.02.2010 at 14.00 hours. So there was a delay of 31 hours. Whereas while P.W.1 was in witness box, she stated that she gave a complaint on the same day. In such circumstances, without assigning proper explanation for the delay in preferring the complaint is fatal to the case of prosecution.

8.Now this Court has to decide whether the ingredients of Section 3(1)(x) of SC and ST (POA) Act have been made out? Section 3 (1)(x) is extracted hereunder:

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

It is the duty of the prosecution to prove that the appellants/accused 1 and 2 with an intention to insult or intimidate with intent to humiliate the person belongs to SC and ST community in a public view.

9.Admittedly, P.W.1 belongs to Hindu Erular community and the same was proved by way of examining P.W.8, who gave Ex.P5 community certificate of P.W.1. Likewise, P.W.7 gave Ex.P4 community certificate of accused persons stating that the accused 1 and 2 belong to Hindu Vanniyar and third accused belongs to Hindu Adi Dravidar.

10.As per the evidence of P.W.1 to P.W.4, they put up their houses in Erikarai (lake bond), which is poramboke land. The adjacent property to their houses was purchased by A1. Except the houses of P.W.1 to P.W.4, there were no other houses in the lake bond. Furthermore, the occurrence was said to have taken place on 16.02.2010 at about 7.00 a.m. and there is no evidence to show that the appellant/accused with an intention to insult or humiliate P.W.1 in any place within a public view.

11.On perusal of P.W.1's chief-examination, it reveals that the accused persons abused her using filthy language. But it does not reveal that the accused persons having known that P.W.1 belongs to Sc and ST community and with an intention, uttered the words. In such circumstances, I am of the view, the prosecution has miserably failed to prove that the appellants/accused are guilty for offence under Section 3(1)(x) of SC and ST Act beyond reasonable doubt.

12.As stated supra, the prosecution has miserably failed to prove that the appellants/accused are guilty for offences under Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act beyond all reasonable doubt. Therefore, benefit of doubt is given in favour of the appellants/accused 1 and 2 and they are acquitted from the charges levelled against them. 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 13.11.2013 in S.C.No.253 of 2010 on the file of the Special Judge (Principal Special Judge) Villupuram Division, Villupuram.
- The appellants/accused 1 and 2 are acquitted from the charges levelled against them and they are set free.
- The fine amount paid by the accused is ordered to be refunded to them.
- Bail bond executed by the appellants/accused shall stand cancelled.
- Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1.The Special Judge
(Principal Special Judge) Villupuram Division
Villupuram.

2. The Judicial Magistrate
No.II, villupuram

3.The chief Judicial Magistrate
Villupuram[for information]

4.The Deputy Superintendent of Police
Villupuram Sub-Division
Villupuram.

5.The district collector, Villupuram

6.The Director General of police,chennai

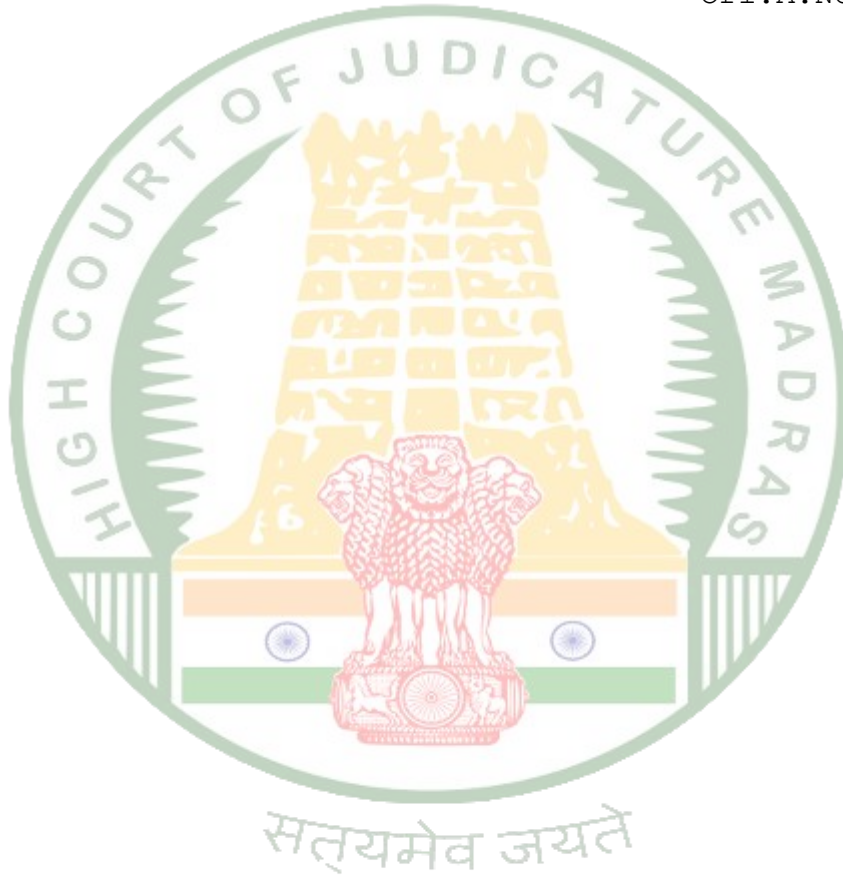
7.The Public Prosecutor
High Court, Chennai.

8.The Record Keeper
Criminal Section, High Court, Chennai.

+1 cc to MR.M.PRABAKAR ADVOCATE SR NO.11211.

Crl.A.No.807 of 2013

PVR[CO]
RD 20/03/2015



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