

Bail Slip

Accused No.2 Vadivel, S/O Palaniappa Nadar, aged 29 years enlarged on Bail by the Order of this Court in M.P.No.1 of 2007 in CrI.A.1076/07 dated 5.12.2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.2.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.1076 of 2007

Vadivel .. Appellant/2nd Accused

Versus

State: Rep. by
Deputy Superintendent
of Police, Palladam,
Coimbatore District
(Cr.No.61/2006 of Avinasipalayam
Police Station) .. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the Conviction and Sentence passed by the Special Judge cum Principal Sessions Judge, Coimbatore Division, Coimbatore in Spl.S.C.No.48/2006 dated 12.11.2007.

For Appellant : Mr.J.Franklin

For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

JUDGMENT

A2 in the Sessions Case No.48 of 2006 on the file of the learned Special Judge under Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989/Principal Sessions Judge, Coimbatore challenges his conviction and sentence.

2. Originally, A1 to A3 were prosecuted for having committed certain offences. The learned Special Judge convicted

and sentenced them as under:-

Name	Accused	Conviction	Sentence
Vadivel	A2/ appellant	(i) Section 3(1)(x) of SC&ST (PA) Act, 1989 (ii) Section 323 IPC	(i) 6 months R.I and fine Rs.1000/- i/d one month R.I (ii) Fine Rs.1000/- i/d one month R.I
Karupusamy, A.Manickam	A1, A3	Section 323 IPC	Fine Rs.1000/- i/d one month R.I

3. The case of the prosecution briefly runs as under:

(i) P.W.1 and A1 to A3 belongs to Perunthozhuvu in Palladam Taluk, now in Tiruppur District. P.W.1 belongs to Hindu-Sakkiliar Community (see Ex.P.10), a scheduled caste. A1 to A3 belongs to Hindu-Nadar Community, a backward class community (see Ex.P.3,4 and P8 community certificates)

(ii) On 19.3.2006, at 8 pm, while P.W.1 came in a bicycle near a Godown on the Perunthozhuvu Road, A2 with an intention to insult him called him by his caste. A2, A1 and A3 fisted P.W.1. He sustained injury. P.Ws.3 and 4 witnessed the occurrence. He was taken to Government Hospital, Palladam. P.W.8 treated him. He had seen multiple abrasions on his back and legs. (Ex.P.6 wound certificate) on Ex.P.7 intimation from the hospital. P.W.10, Head Constable, at the said hospital obtained Ex.P.1 complaint from P.W.1. P.W.1 lodged Ex.P.1 complaint to P.W.10 Head Constable. He registered this case (Ex.P.9 F.I.R) for an offence under Section 3(1)(x) of SC&ST (PA) Act and Section 323 IPC. He sent the F.I.R to P.W.12 D.S.P, Palladam.

(iii) P.W.12 took up his investigation. Visited the scene place Prepared Ex.P.5 Observation mahazar in the presence of P.W.7 and another witness. Drew Ex.P.11 Rough Sketch. He has examined P.W.1 and other witnesses and recorded the statement under Section 161 Cr.P.C. P.W.1 handed over him M.O.1, his torn shirt. It was received by P.W.12 under mahazar. He has arrested the accused, sent them to jurisdictional Magistrate for custody. He has obtained community certificate for P.W.1

and for A1 to A3. Concluding his investigation, he filed the Final Report before the Court.

4. The learned commital Magistrate committed the case to the Court of Special Judge under SC/ST (PA) Act, 1989/Principal Sessions Judge, Coimbatore.

5. Upon hearing both sides and on consideration of the case records, the learned Special Judge framed charges under Section 3(1)(x) SC/ST (PA) Act, 1989 and under Section 323 IPC as against A2/appellant and under Section 323 IPC as against A1 and A3. They have pleaded not guilty of the charges.

6. To substantiate the charges, prosecution examined PWS 1 to 12, marked Exs.P.1 to P.11 and exhibited M.O.1

7. When the accused were examined under Section 313 Cr.P.C. on the incriminating aspects appearing as against them in the prosecution evidence, they have denied the offences. They did not examine any witness nor mark any document on their side.

8. Appreciating the evidence and submissions of both sides, the learned Special Judge convicted and sentenced A1 to A3 as already stated above.

9. The learned counsel for the appellant/A2 would contend that prosecution has not established the charges framed against A2 beyond all reasonable doubts. P.W.12, D.S.P, who has investigated this case has not been specifically empowered under the Rules framed under the SC/ST (PA) Act to investigate this case.

10. The learned counsel for the appellant would also submit that the conviction under Section 323 IPC also cannot be sustained because there is no corroborating medical evidence. There is complete variation as regards the allegation of assault mentioned in Ex.P.1, complaint, the evidence of P.W.1 and the evidence of P.W.8 Doctor and there is inconsistency in the evidence of P.Ws.1, 3 and 4 also.

11. On the other hand, the learned Additional Public Prosecutor would submit that prosecution proved that A2 is a non Scheduled Caste member and P.W.1 belongs to Scheduled Caste community. The evidence of P.W.1 is crystal clear as to the allegation made by him against A2 in Ex.P.1 complaint. In the circumstances, the learned Special Judge has rightly convicted the appellant and also appropriately sentenced him.

12. I have anxiously considered the rival submissions, perused the Judgment of the Trial Court.

13. Now, the question is whether the charges under Section 3 (1)(x) SC/ST (PA) Act, 1989 and under Section 323 IPC as against A2/appellant have been proved by the prosecution beyond all reasonable doubts.

14. A2 is not a stranger to P.W.1. Both of them belongs to same village. It has been clearly established not that A2 belongs to Hindu- Nadar community while P.W1 is a Scheduled Caste member.

15. P.W.1 deposed that on the occurrence day, he has been called by the appellant by his caste name with an intention to insult him. On this aspect, he was elaborately cross examined by the defence side. The first charge against A2 is under Section 3 (1)(x) SC/ST (PA) Act.

16. With regard to the arguments of the learned counsel for the appellant based on Rule 7, framed under the Scheduled Caste and Scheduled Tribes (Prevention Atrocities) Act, 1989, I have occasion to consider the same elaborately in Periyasamy vs. Deputy Superintendent of Police, Avinashi Sub-Division, Kovilpalayam Police Station, Coimbatore District {2015 (2) MWN (Cr.) 628}. It is relevant here to extract the following portions from the judgment in the said case:-

"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 (Cr1.) 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)."

17. Now, in the instant case, as per the rule framed under SC/ST (PA) Act, the investigation has to be done by a DSP, who should be specifically empowered by a competent officer as specified in the Rules. It cannot be a matter of oral instructions. There must be a written order passed under the Rules framed under the SC/ST (PA) Act specifically empowering the DSP. The DSP has to state in chief examination that he has been so empowered. But in this case, he did not say so. Further during his cross examination, he was specifically asked whether he was so empowered. But, the prosecution could not establish the same. No records to show that he has been so empowered. In the circumstances, the principles laid down by this Court squarely applies to this case. Thus, the prosecution under Section 3(1)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vitiates.

18. The next charge is a charge under Section 323 IPC. P.W.1 is the victim in this case. He is stated to be the injured. He is the author of the FIR. In the FIR, he has stated specifically that A1 to A3 have fisted him and also assaulted him on his back. P.W.8 is a civil surgeon attached to Government Hospital, Palladam. In his evidence, P.W.8 has ruled out the possibility of P.W.1 having sustained injury by fisting. P.W.8 also opined that the injuries could have been caused by a stick. There is variation as to the injury sustained by P.W.1 in his oral evidence and also medical evidence in this case. Thus the veracity of P.W.1 having sustained the injury in the manner as stated by him is open to doubt. In such circumstances, it is quite unsafe to act upon such a testimony of P.W.1. Thus, the charge under Section 323 IPC also fails.

19. For the foregoing reasons, the charges framed under Sections 3(1)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 323 IPC against appellant/A2 were not proved by the prosecution beyond all reasonable doubts.

20. There is one more aspect. Now the appellant/A2 has been acquitted also with reference to the charge under Section 323 IPC on general points. A1 and A3 also have been convicted under Section 323 IPC based on the very evidence of P.W.1. Now, in such circumstances, though A1 and A3 have not appealed, the benefit of acquittal of A2/appellant will enure to A1 and A3 also.

21. In the result, this appeal is allowed. The conviction recorded under Section 3(1)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section under Section 323 IPC and sentence imposed upon A2/appellant are set aside. He is acquitted from both charges. The fine amount shall be refunded to him.

22. A1, namely, Karupusamy and A3, namely, A.Manickam, who are also convicted under Section 323 of IPC in the same Spl.S.C.No.48/2006 on the file of the learned Special Judge/Principal Sessions Judge, Coimbatore and who have not appealed against their conviction and sentence are also entitled to have the benefit of doubt accorded to A2. Thus, the conviction of A1 and A3 under Section 323 kua IPC and sentence awarded are also set aside. They are entitled to refund of the amount, if they have already paid.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Special Judge
under SC&ST (P.A.) Act/
Principal Sessions Judge,
Coimbatore.
2. The Additional Public Prosecutor,
High Court, Madras. सत्यमेव जयते
3. The Superintendent of Police,
Coimbatore District
4. Deputy Superintendent
of Police, Palladam,
Coimbatore District.

+1 cc to Mr.J.Franklin, Advocate Sr.9762

Cr1.A.No.1076 of 2007

cnr(CO)
srg(11/03/2016)