

BAIL SLIP

That the Appellants herein / Accused 1 & 2 namely, 1.Chinnathambi. S/o.Venkataraman, 2.Ayyappan, S/o.Venkataraman, in S.C.No.147 of 2011 on the file of the Sessions Judge at Thiruvannamalai, was released on bail as per the Order of this Court dated 30.10.2015 in Crl.M.P.No.1 of 2015 in Crl.A.656 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

(Judgment reserved on 23.06.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.656 of 2015

1. Chinnathambi  
2. Ayyappan

... Appellants

Vs.

The State, represented by  
The Deputy Superintendent of Police,  
Chengam Sub-Division,  
Chengam Police Station (Crime No.1048 of 2010),  
Tiruvannamalai District.

... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of conviction and sentence passed by the Sessions Court, Tiruvannamalai, dated 08.10.2015 in S.C.No147 of 2011.

For appellants : Mr.P.Vasanth

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

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JUDGMENT

This Criminal Appeal is filed by the appellants/A-1 and A-2 against the judgment dated 08.10.2015 in S.C.No.147 of 2011 on the file of the Sessions Court, Tiruvannamalai, convicting the appellants/A-1 and A-2 for the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (old Act of 1989) and sentencing each of them to undergo rigorous imprisonment for six months and to pay fine of

Rs.5,000/- each, in default, to undergo simple imprisonment for one month, each. They were acquitted of the charges framed under Section 3(1)(xi) of the said Act and Section 506 (Part-2) IPC.

2. The gist of the prosecution case is that P.W.1 Poongavanam who belongs to a Scheduled Caste community, is a resident of Thokkavadi Village, Thukkapettai Post, Chengam Taluk, Thiruvannamalai District. P.W.2 Kanchana is the sister of P.W.1 and she is also a resident of the same village. The appellants/A-1 and A-2 belong to Peyalampattu Village and are from Hindu Vanniyar Community. P.W.1 is owning 2-1/2 acres of land in Peyalampattu Village; likewise, P.W.2 is owning 2-1/2 acres of land in the same village. The said lands were assigned to their father by the Government of Tamil Nadu under Panchamar Land Scheme. The father of P.Ws.1 and 2 expired twenty years back. Thereafter, P.Ws.1 and 2 were in possession and enjoyment of the said land and were cultivating the same. On 04.12.2010, the appellants trespassed into the lands of P.Ws.1 and 2 intentionally and removed and destroyed the thatched house therein. Subsequently, when the complainant questioned the above act of the accused persons, the appellants/A-1 and A-2, with an intention to cause annoyance, insulted P.Ws.1 and 2 and scolded them in filthy language by uttering their caste/community name in public place with public view. Further, at the same time and place, during the course of same transaction, the first appellant/A-1 caught hold of the hand of P.W.1 and pulled her saree with criminal force with an intention to outrage her modesty and the second appellant/A-2 caught hold of the hand of P.W.2 and likewise pulled her saree with criminal force with an intention to outrage her modesty. Both the accused criminally intimidated P.W.1/complainant and P.W.2 with dire consequences that they will do away with their lives, if they do not go out from the land. Thereafter, on 19.12.2010, P.W.1 gave complaint to P.W.9 Inspector of Police and the said complaint was registered in Crime No.1048 of 2010 for the offences punishable under Sections 427, 506 (Part-1) IPC and Section 3(1)(x) of the above said S.C and S.T. Act. Ex.P-3 is the F.I.R. The copy of the complaint/F.I.R. was sent to the Judicial Magistrate, Chengam. The complaint/F.I.R. and records were forwarded to the higher official, based upon which, P.W.11 Deputy Superintendent of Police took up the investigation; he visited the place of occurrence and prepared Ex.P-6 rough sketch in the presence of P.W.8 Ayyakannu and one Arul; he also prepared Ex.P-2 observation mahazar in the presence of P.W.8 and the said Arul; he examined the material witnesses and other witnesses and recorded their statements under Section 161 Cr.P.C.; he approached the Tahsildar of Chengam and applied and obtained the Community Certificates Exs.P-7 and P-8 of P.Ws.1 and 2

respectively. Thereafter, since P.W.11 Deputy Superintendent of Police was transferred to other place, P.W.13 Deputy Superintendent of Police took up further investigation and recorded the statements of the Deputy Tahsildar P.W.10 and the Revenue Tahsildar Elangovan. He completed the investigation and filed charge-sheet against the appellants/A-1 and A-2 for the offences punishable under Section 506 (Part-2) IPC, and Sections 3(1)(x) and 3(1)(xi) of the said Act. Thereafter, based on the charge sheet filed before the trial Court for the above offences, the case was taken on file in Sessions Case No.147 of 2011.

3. In order to prove their case, during the course of trial, the prosecution has examined 13 witnesses and exhibited eight documents.

4. When the appellants/A-1 and A-2 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. They did not examine any witness, but marked Exs.D-1 to D-3.

5. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, after conducting trial, the trial Court convicted and sentenced as stated supra. Challenging the same, both the accused have filed this appeal.

6. Learned counsel for the appellants/A-1 and A-2 submitted as follows:

(i) The alleged occurrence is said to have taken place on 04.12.2010 at about 12 noon, whereas the complaint was lodged only on 19.12.2010 and there was a delay of 15 days in lodging the complaint, which has not been properly explained by the prosecution. Had the alleged occurrence been true, P.W.1 complainant would have lodged the complaint immediately. Thus, it is submitted by the learned counsel for the appellant that the delay of 15 days clearly shows that no such occurrence would have taken place.

(ii) The allegations in the complaint do not attract the offence under Section 3(1)(x) of the said Act and to attract the offence under Section 3(1)(x) of the said Act, there should be an allegation to the effect that the accused is not a member of the Scheduled Caste or Scheduled Tribe and he has intentionally insulted or intimidated the complainant and with intention to humiliate a member of a SC/ST in any place within public view. However, in this case, there is no clear mentioning of such place in the complaint/F.I.R.

(iii) Learned counsel further submitted that as per Rule 7 (1) of the S.C. and S.T. (Prevention of Atrocities) Rules, in respect of the offence committed under the said Act, the same



shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police and 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. In the instant case, no order was passed empowering P.W.11 D.S.P. or P.W.13 D.S.P. to investigate the case. Since P.W.11 (investigating officer) and P.W.13 (investigating officer) were not authorised in writing to investigate the case as enunciated under Rule 7(1), there is inherent defect in conducting the investigation of the case and the same would vitiate the case of the prosecution.

Hence, for the above reasons, learned counsel prayed for acquitting the appellants.

7. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police mainly contended that P.Ws.1 and 2 are members of Scheduled Caste community and their caste has been proved by Exs.P-7 and P-8 Community Certificates, but the appellants/A-1 and A-2 are not the members of the Scheduled Caste community, which is proved by Exs.P-4 and P-5. P.W.1 stated in her evidence that the appellants/A-1 and A-2 intimidated and insulted P.Ws.1 and 2 by uttering the name of their caste and criminally intimidated her, with intention to outrage their modesty. Hence, the evidence of P.Ws.1 and 2 cannot be simply brushed aside. Hence, the evidence of P.Ws.1 and 2 alone is sufficient to convict the appellants/A-1 and A-2, coupled with Exs.P-4, P-5, P-7 and P-8 community certificates and Ex.P-1 complaint. Therefore, he prayed that the other submissions of the learned counsel for the appellants do not merit acceptance and hence, he prayed for dismissal of the appeal by confirming the conviction and sentence imposed on the appellants/A-1 and A-2.

8. Heard the learned counsel appearing for both sides, anxiously considered their submissions and perused the materials available on record.

9. It is the main submission of the learned counsel for the appellants/A-1 and A-2 that in the complaint, P.W.1/de-facto complainant has not stated as to whether the appellants belong to SC / ST or not. Similarly, there is no allegation to the effect that the appellants intentionally insulted P.Ws.1 and 2 and hence, the allegations in the complaint will not attract the offence under Section 3(1)(x) of the Act. In support of his contentions, learned counsel for the appellants/accused relied on a decision of the Supreme Court reported in 2008 (12) SCC 531

(Gorige Pentaiah Vs. State of A.P), wherein, the Apex Court held as follows:

"6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27.05.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."

10. Thus, by relying upon the above said judgment of the Apex Court, learned counsel for the appellants/accused submitted that there is no allegation in the complaint Ex.P-1 to attract the offence under Section 3(1)(x) of the said Act and the very continuation of the criminal trial itself is unjustified. That apart, learned counsel further submitted that P.Ws.11 and 13 Deputy Superintendents of Police were not empowered to investigate the case, as the provisions of Rule 7(1) of the said Rules were not followed.

11. With regard to the contention of the learned counsel for the appellants/accused there is no allegation in the complaint/Ex.P-1 to attract the offence under Section 3(1)(x) of the said Act, I am of the opinion that it is no doubt that there is no allegation in the said complaint lodged by P.W.1/complainant to show that the appellants/accused are not the members of the SC/ST community. But, on a perusal of the said judgment of the Supreme Court reported in 2008 (12) SCC 531 (cited supra), I find that the said judgment was delivered by the Apex Court while dealing with the case under Section 482 Cr.P.C. But, in the instant case, after completion of the investigation and on trial, the appellants/accused were convicted for the above offences. Moreover, during the course of investigation, the Community Certificates of the appellants/accused, which were marked as Exs.P-4 and P-5 were obtained to show that the appellants are not the members of the

SC/ST community. Therefore, the said judgment of the Supreme Court relied on by the learned counsel for the appellants/accused is not applicable to the facts of the present case, especially when the appellants/accused have not denied the fact that they are not belonging to SC/ST Community in their statement recorded under Section 313 Cr.P.C. However, this Court is of the view that non-mentioning of necessary ingredients, coupled with the fact that the complaint was given after 15 days from the date of occurrence, would show that the evidence of P.W.1/complainant cannot be believed. Had the occurrence been true, the complainant would have stated in clear terms in the complaint with regard to the fact that the appellants/accused are not belonging to the members of SC/ST community. There is no averment in Ex.P-1 complaint to the effect that the appellants/accused intentionally insulted or intimidated the complainant with an intent to humiliate in a place within public view. Therefore, the evidence of P.W.1 did not inspire the confidence of this Court. Further, in the absence of necessary ingredients in the complaint, the evidence of P.W.1/complainant cannot be relied upon. Under such circumstances, the trial Court ought to have acquitted the appellants/accused, by negating the evidence of P.Ws.1 and 2,

12. That apart, as far as Rule 7(1) of the S.C. and S.T. (Prevention of Atrocities) Rules is concerned, it stipulates that in respect of the offence committed under the said Act, the same shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police and 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. In this regard, it is useful to refer a decision of the Madhya Pradesh High Court reported in 2005 Cri.L.J. 3782 (Dhanraj Singh and etc. Vs. State of M.P), wherein, it has been held as under:

"5. .. ....Therefore, it is necessary that the provisions of the Act and Rules should be followed strictly and in such cases investigation should be conducted by police officer not below the rank of Deputy Superintendent of Police. This special rule has a purpose. Therefore, if the Rules are not followed strictly by the investigating agencies, purposes of the Act cannot be achieved. Thus, this contention of the learned counsel for the appellant carries weight. There is no compliance of provisions of Rule 7. Nature of the rule is mandatory. Investigation has not been conducted by Deputy Superintendent of Police either appointed by the State Government or Director General of Police or



Superintendent of Police. There is no evidence to this effect in the cases and when the investigation has not been done by an authorised or appointed officer, the entire investigation is vitiated and on this ground conviction of the appellants cannot be maintained. Learned counsel for the respondent State could not satisfy the compliance of the aforesaid rule in the cases and also could not explain how the trial is legal, when the proper investigation is not done by the Dy. Superintendent of Police."

13. In the case on hand, learned Additional Public Prosecutor appearing for the respondent-Police has not satisfied the Court about the mandatory compliance of Rule 7(1) of the said Rules and has also not explained how the trial is legal, when there is no evidence in this case to show that P.Ws.11 and 13 D.S.Ps. have been authorised in writing to investigate the case under the said Rules. Therefore, the entire investigation would stand vitiated.

14. Thus, the appeal is liable to be allowed on the following grounds:

(i) Ex.P-1 complaint did not contain necessary ingredients to the effect that the appellants/accused did not belong to the members of the SC/ST Community.

(ii) The delay of 15 days in lodging the complaint, has not been properly explained by the prosecution.

(iii) There is no evidence to show that P.Ws.11 and 13 investigating officers have been authorised in writing as stipulated under Rule 7(1) of the S.C. and S.T. (Prevention of Atrocities) Rules, to investigate the case

15. Accordingly, the Criminal Appeal is allowed, setting aside the conviction and sentence imposed on the appellants/A-1 and A-2 by the trial Court. They are acquitted of the charges. The fine amount, if paid by the appellants, shall be refunded to them. The bail bond, if any executed by the appellants, shall stand cancelled.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

CS

To

1. The District & Sessions Judge,  
Tiruvannamalai.
2. The Public Prosecutor,  
High Court, Madras.
3. The Deputy Superintendent of Police,  
Chengam Sub-Division,  
Chengam Police Station (Crime No.1048 of 2010),  
Tiruvannamalai District.
4. The Record Keeper,  
Criminal Section (Records),  
High Court, Madras.

+1cc to Mr.P.Vasanthi, Advocate, S.R.No.39420

Crl.A.No.656 of 2015

NM(CO)  
CA(04/08/2016)



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