

Bail Slip

The Appellants/Accused Viz.1)Kalaivani @ Kavitha 2) Senathipathi Gounder 3)Somasundara Gounder & 4)Murugasamy Counder were released on bail as per the order of this court dated 03.04.2008 in CrI.MP No.1/2008 in CrI.A.No.236 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-01-2016

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

CRIMINAL APPEAL No.236 of 2008

1.Kalaivani @ Kavitha
2.Senathipathi Gounder
3.Soma Sundara Gounder
4.Murugasamy Gounder ... Appellants

vs

State By:
The Deputy Superintendent of Police
Palladam Sub Division
Avinashipalayam Police Station
Avinashipalayam, Coimbatore District
(Crime No.84/2006) ... Respondent

Criminal appeal preferred under Section 374(2) of the Code of Criminal Procedure against the judgment dated 11.2.2008, made in Special Sessions Case No.7/2007, on the file of the Special Court cum Principal Sessions Court, Coimbatore.

For Appellants : P.M.Duraiswamy

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

The convictions and sentences dated 11.2.2008, passed in Special Sessions Case No.7 of 2007, by the Principal District and Sessions Court (Special Court for SC & ST Cases), Coimbatore, are being challenged in the present Criminal Appeal.

2.The case of the prosecution is that the de-facto complainant, by name Vimala, belongs to Scheduled Caste. On 19.4.2006, at about 8.00 A.M., the de-facto complainant has travelled in a bus bearing Route No.3/24. At that time, the

first accused has berated against her by using her caste and also attacked on her person. On the same day at about 9.00 P.M., while the de-facto complainant returned to her house in the bus bearing Route No.3F/15C, all the accused have joined together and also berated the de-facto complainant by using her caste and during the course of the second occurrence, the accused 2 and 3 have attacked her. After occurrence, the de-facto complainant has given a complaint and the same has been registered in Crime No.84 of 2006 on the file of the Avinashipalayam Police Station, Coimbatore.

3.On receipt of the complaint, the Investigating Officer, who is P.W.16, has taken up investigation and examined the connected witnesses and after completing the investigation, has laid a final report on the file of the trial Court, and the same has been taken on file in Special Sessions Case No.7 of 2007.

4.The trial Court, after hearing the arguments on both sides and upon perusing the relevant records, has framed the first charge against the first accused under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, second charge against her under Section 323 of the Indian Penal Code, third charge against the accused 2 to 4 under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, fourth charge against the accused 2 and 3 under Section 323 of the Indian Penal Code and fifth charge against the accused 2 and 4 under Section 354 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

5.On the side of the prosecution, P.Ws.1 to 16 have been examined and Exs.P1 to P13 have been marked.

6.When the accused have been questioned under Section 313 of the Cr.P.C., as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral evidence has been adduced on the side of the accused.

7.The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found accused 1 to 4 guilty under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and sentenced them to undergo 6 months Rigorous Imprisonment and also imposed a fine of Rs.1,000/- upon each of them, with usual default clause. The trial Court has found accused 1 to 3 guilty under Section 323 of the Indian Penal Code and imposed a fine of Rs.1,000/- upon each of them, with usual default clause. The trial Court acquitted the accused 2 and 4 of the charge framed under Section 354 of the Indian Penal Code. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been preferred at the

instance of the accused as appellants.

8.The learned Counsel appearing for the appellants has strenuously contended that the entire case of the prosecution has proceeded on the basis that the de-facto complainant belongs to a particular community, whereas in Ex.P6 Community Certificate, the name of some other community has been mentioned and the prosecution has not given proper explanation with regard to such a discrepancy, and further, the alleged occurrence has taken place on 19.4.2006, and Ex.P1 complaint, has been given on 21.4.2006, and no sufficient explanation has been given on the side of the prosecution for such a delay and even in Ex.P1, except the name of the second accused, the names of the remaining accused have not been mentioned and the trial Court, without considering the vital infirmity found on the side of the prosecution, has erroneously invited convictions and sentences against the accused and the same are liable to be set aside.

9.The learned Additional Public Prosecutor has contended that the initial occurrence has taken place on 19.4.2006, at about 8.00 P.M., in the bus bearing Route No.3/24, and at the time of initial occurrence, the first accused has berated the de-facto complainant by using her caste and since the de-facto complainant belongs to Scheduled Caste, the first accused has committed an offence punishable under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Further, the first accused has also attacked the de-facto complainant and thereby, caused simple injuries on her person. The second occurrence has occurred on the same day at about 9.00 P.M., in the bus bearing Route No.3F/15C, and during the course of the second occurrence, the accused 2 to 4 have joined together and scolded the de-facto complainant by using her caste and thereby, they committed an offence punishable under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Further, during the course of the second occurrence, the accused 2 and 3 have attacked the de-facto complainant and thereby, caused simple injuries and for the purpose of proving the charges framed against all the accused, the de-facto complainant has been examined as P.W.1, and in fact, she has given specific evidence with regard to each and every overt act alleged to have been committed by each and every accused, and the trial Court, after considering the overall evidence available on record, has rightly found all the accused guilty under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and also found the accused 1 to 3 guilty under Section 323 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court, do not warrant interference.

10.On the basis of the rival submissions made on either side, the Court has to look into as to whether the prosecution has established the genesis of it's case?

11.The specific case of the prosecution is that the de-

facto complainant belongs to Chakkiliar Community, which comes within the purview of Scheduled Caste. For the purpose of proving the said aspect, on the side of the prosecution, Ex.P6 Community Certificate, has been filed, wherein, it has been clearly stated that the de-facto complainant belongs to Madhari community. The author of Ex.P6 viz. the concerned Tahsildar, has been examined as P.W.10 and his specific evidence is that Chakkiliar Community is entirely different from Madhari Community. Therefore, it is quite clear that the real community of the de-facto complainant has been suppressed in the present case.

12.The specific evidence given by the de-facto complainant, is that even in the initial occurrence as well as in the subsequent occurrence, all the accused have uttered her caste as Chakkilia. But, the entries found in Ex.P6, are totally contra to the evidence given by the de-facto complainant. Since the prosecution has not at all established the alleged fact that the de-facto complainant belongs to Chakkiliar Community and since even on the side of the prosecution, contra evidence is available by way of filing Ex.P6, it is needless to say that the genesis of the case of the prosecution itself is false.

13.The specific case of the prosecution is that the occurrence has taken place on 19.4.2006, whereas Ex.P1 complaint, has been given on 21.4.2006. Further, on the side of the prosecution, contra evidence is available for the purpose of proving that Ex.P1 has been given only on the basis of the advice given by the leader of community of the de-facto complainant. Further, in Ex.P1, except the names of the accused 1 and 2, the names of the remaining accused have not at all been mentioned. The de-facto complainant, who has been examined as P.W.1, has not specifically stated the names of the accused 2 to 4. On that score also, the Court cannot believe the evidence given by P.W.1 (de-facto complainant) with regard to the remaining charges.

14.As found earlier, the prosecution has not established the fact that P.W.1 (de-facto complainant) belongs to Chakkiliar Community. But, on the side of the prosecution, Ex.P6 Community Certificate of the de-facto complainant, has been filed, wherein, it has been clearly stated that she belongs to Madhari Community. Therefore, it is quite clear that the prosecution has not at all established the charges framed against all the accused.

15.In view of the foregoing enunciation, the Court has found considerable force in the contentions put forth on the side of the appellants. The trial Court, without considering the factual infirmities or lapses found on the side of the prosecution, has erroneously found the accused 1 to 4 guilty under Section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and the accused 1 to 3 guilty under Section 323 of the Indian Penal Code.

In fine, the criminal appeal is allowed. The convictions and sentences passed by the trial Court in Special Sessions Case No.7 of 2007, are set aside and the appellants/accused are acquitted of the charges framed against them. Bail bonds if any executed by them, shall stand cancelled. Fine amounts if any paid by them, are ordered to be refunded to them.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nsv

To:

- 1.The Principal District and Sessions Judge
(Special Court for SC & ST Cases),
Coimbatore
- 2.The Deputy Superintendent of Police
Palladam Sub Division
Avinashipalayam Police Station
Avinashipalayam, Coimbatore District
(Crime No.84/2006)
- 3.The Public Prosecutor
High Court, Madras.
- 4.The Chief Judicial Magistrate, Coimbatore
- 5.The District Collector, Coimbatore
- 6.The Superintendent, Central Prison, Coimbatore.

+1 cc to M/s.P.M.Duraisamy, Advocate, sr.2274

rsk co
kra 28.01.2016

CRL.A.No.236 of 2008