

BAIL SLIP

Accused V.Ponnusamy aged 47 years S/o.K.Velusamy, enlarged on Bail by the order of this Court in CrI.MP.No.1 of 2008 in CrI.A.NO.277 of 2008 dated 16.04.2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-02-2016

CORAM:

THE HONOURABLE DR. JUSTICE P.DEVADASS

CRIMINAL APPEAL NO.277 of 2008

V.Ponnusamy ... Appellant

vs.

State Represented by
Deputy Superintendent of Police,
Palladam Range,
Kamanaicken Palayam Police Station,
Coimbatore District
Crime No.387 of 2007

... Respondent

This Criminal Appeal is preferred under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgment of the learned Special Judge cum Principal Sessions Judge, Coimbatore made in Special S.C.No.36 of 2007 by his judgment dated 3.4.2008 convicting and sentencing the appellant to undergo 6 months Rigorous Imprisonment for the offences under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and to pay a fine of Rs.1,000/-, in default, to undergo 1 month R.I., and under Section 506 (ii) IPC sentencing him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 1 month R.I. and directed both the sentences to run concurrently.

For Appellant : Mr.K.R.Shankar

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

J U D G M E N T

The sole accused in the Special Sessions Case in Special S.C. No.36 of 2007 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. The learned Special Judge convicted and sentenced him as under:-

Conviction	Sentence
(i) Section 3 (1)(x) of SC&ST (PA) Act, 1989	(i) Six months R.I and fine of Rs.1,000/- in default 1 months R.I
(ii) Section 506(ii) IPC	(ii) Six months R.I and fine of Rs.1,000/- in default 1 months R.I

The learned Special Judge directed both the sentences to run concurrently. The appellant had paid the fine amounts.

3. The prosecution case runs as under:-

(i) PW-1 Ranjitha and her husband Masani are residing in Sithanaicken Palayam in Palladam Taluk, in Tiruppur District. They belongs to Hindu Mathari Community, which is a Scheduled Caste. Accused Ponnusamy also belongs to the same village. He belongs to Hindu Kongu Vellalar Community, which is a Backward Class Community;

(ii) Masani served in the Power Loom run by the father of the accused. As between the accused and Maasani, there was a scuffle. In this connection, Masani complained against the accused. FIR was registered by Kamanaicken Palayam Police as against the accused (Ex.P-6 FIR);

(iii) On 2.9.2007, in his house, Masani was in convalescent stage. At about 6 p.m. the accused came. In order to insult PW-1, he called her by her caste and also threatened her to direct her husband to withdraw the case given against him, otherwise he will burn their entire family;

(iv) On 3.9.2007, at about 5.30 p.m., at the Kamanaicken Palayam Police Station, PW-1 gave Ex.P-1 complaint to PW-10 Rajaram, Inspector of Police. He registered this case for offences under Section 506(ii) IPC read with Section 3(1)(x) of SC&ST (PA) Act (Ex.P-5 FIR). He sent the F.I.R. to PW-11, Kamaraj, D.S.P., Palladam. He also sent a copy of the same to

the Judicial Magistrate, Palladam;

(v) PW-11 took up his investigation. Visited the place of occurrence. Prepared Ex.P-7 Observation Mahazar in the presence of PWs.6 and 7. He drew Ex.P-7 rough sketch of the scene place. He examined the material witnesses and other witnesses and recorded their statement under Section 161 Cr.P.C. He obtained Ex.P-2 Community Certificate for the accused from PW-2 Rathinaganapathy, Dy. Tahsildar, Palladam. He also obtained Ex.P-4 Community Certificate for PW-1 from PW-9, Nagaraj, Tahsildar, Palladam. On 8.10.2007, at about 9 a.m., near Sethunaicken Palayam Bus Stop, he arrested the accused. Sent him to jurisdictional Magistrate for judicial custody. Concluding his investigation, on 17.10.2007, he filed the Final Report before the concerned Court.

4. The learned Special Judge after complying with the statutory formalities, heard both sides, framed charges under Sections 3(1)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and under Section 506(ii) IPC.

5. Since the accused pleaded not guilty to the charges, prosecution examined PWs 1 to 11, marked Exs.P-1 to P-9 to substantiate the charges.

6. When the accused was examined under Section 313 Cr.P.C. on the incriminating aspects appearing as against the accused in the prosecution evidence. He denied the offences. He also examined himself as DW-1 and marked Ex.D-1 Certificate issued by the learned Judicial Magistrate-II, Udumalpet.

7. Appreciating the evidence on record and upon hearing both sides, the learned Special Judge convicted and sentenced the accused as stated in paragraph 2, supra.

8. The learned counsel for the appellant contended that prosecution has not established the charges framed against the accused beyond all reasonable doubts. One of the main ingredient for an offence under Section 3(1)(x) of SC&ST (PA) Act is that the offence should have been committed in a place which is within public view. However, in this case, there is no clear cut mentioning of such a place in the FIR. However, in her evidence, PW-1 improved the same. PWs.3 and 5 are her close relatives. Their evidence would show that they and PW-1 are not consistent with reference to the locational details of the place of occurrence.

9. The learned counsel for the appellant also contended that as between PW-1's husband and the accused there is prior enmity. Ex.P-6 FIR evidences this. Nurturing this in his mind,

he had engineered this case through his wife. This case is motivated. Further, he is indebted to the appellant. In order to deter the appellant from demanding the money, he has foisted this case against the accused with the assistance of his wife.

10. The learned counsel for the appellant also contended that no ingredient for an offence under Section 506 (ii) IPC also has been established. Even as per the prosecution, at the time of occurrence, the accused was not armed nor he came to the scene place with any kerosene tin or with any corrosive substance. He would also submit that words may be highly inflammatory, but they will not be equated to lethal weapons.

11. The learned counsel for the appellant also contended that this prosecution is vitiated. Elaborating his submission, the learned counsel has submitted that PW-11, D.S.P., who has investigated this case is not a specially empowered Officer as per Rule 7(1) of the Rules framed under SC&ST (PA) Act. Further, as per Rule 7(2), within 30 days, PW-11 has not completed his investigation and filed the Final Report. There is violation of mandatory Rules. In such an event this prosecution is faulty. In this connection, he had cited my own judgment in Periyasamy vs. Deputy Superintendent of Police, Avinashi Sub-Division, Kovilpalayam Police Station, Coimbatore District {2015 (2) MWN (Cr.) 628}.

12. On the other hand, the learned Additional Public Prosecutor would submit that PW-1, being a member of Scheduled Caste has been proved through Ex.P-4 Certificate. The accused is a member of Non-Scheduled Caste Community. This has been proved by Ex.P-2 Community Certificate. PW-1 had very clearly stated in her Ex.P-1 that with an intention to insult her, the accused had called her by her caste and also criminally intimidated her, threatened to finish her family by mischief by fire. Merely because PWs.3 and 5 are related to PW-1, their evidence cannot be brushed aside.

13. I have anxiously considered the rival submissions, perused the materials on record and the impugned judgment of the Trial Court, the entire materials on record and refreshed my memory by referring to my own judgment in Periyasamy case (supra).

14. Now the question before this Court is whether the prosecution has established the charges under Section 3(1)(x) of SC&ST (PA) Act, 1989 and Section 506(ii) of IPC framed against the accused beyond all reasonable doubts.

15. One Masani's wife is PW-1 Ranjitha. She belongs to Hindu-Mathari Community, a Scheduled Caste (see Ex.P-4 and the evidence of PW-9 Nagaraj, Tahsildar, Palladam). Accused

Ponnusamy belongs to Hindu-Kongu Vellalar Community, a Backward Class Community (see Ex.P-2 and the evidence of PW-2 Rathina Ganapathy, Deputy Tahsildar, Palladam).

16. The first charge against the accused is under Section 3(1)(x) of SC & ST (P.A.) Act, 1989.

17. The said Section runs as under:-

"The main allegation as against the appellants is that they have committed an offence under Section 3(1)(x) of SC&ST (P.A.) Act, 1989. This Section runs as under:-

"Section 3 of Scheduled Castes and Scheduled Tribes (PA) Act 1989 (it may hereinafter be referred to as the Act) deals with the punishment for offences of atrocities. Sub-Section (1) to Section 3 enacts as under:

'Whoever not being a member of a Scheduled Caste or a Scheduled Tribe.-

Clause (x) to Sub-Section (1) of Section 3 of the Act reads as follows:-

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

18. In Sekar and Others vs. D.S.P., Pudhuchatram {CDJ 2011 MHC 5916}, this Court brought out the following ingredients of the said offence:-

"20. To attract the proviso to Clause (x) to Sub-Section (1) of Section 3 of the Act, the following ingredients are very much essential:

1. The person who is accused of shall not be a member of the Scheduled Caste or Scheduled Tribe;

2. The person who is aggrieved shall be a member of the Scheduled Caste or Scheduled Tribe;

3. Criminal intention to insult or intimidate or to humiliate;

4. The occurrence should have taken place in any place within public view.

21. Clause (x) to Sub-Section (1) of Section 3 of the Act itself is very clear that whoever not being a member of Scheduled Caste or Scheduled Tribe intentionally insults or intimidates with intentionally or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

19. Now we have to see whether the occurrence has taken place in a place which is within public view.

20. PW-1 had stated in her evidence that on 2.9.2007, at about 6 p.m., near the bathroom in their house, while she was cutting the trees for firewood, the accused came and called her by her caste. However, in her Ex.P-1 complaint, which is the earliest prosecution document in this case, she had stated that at that time, she was in her house. Thus, she made improvement in her evidence.

21. Just because PWs.3 and 5 are related to PW-1, we are not to brush aside their evidence. However, their evidence has to be approached with much care and caution. It must be clear cut. However, in their cross-examination, they have given different versions as to the place of occurrence in this case. On this aspect, the Investigation Officer was also cross-examined by the accused.

22. Thus, it is clear that prosecution has failed to establish that the occurrence has taken place in a place which is within public view. One of the main ingredients for an offence under Section 3(1)(x) of SC&ST (P.A.) Act, 1989 is missing in this case. सत्यमेव जयते

23. The evidence of PW-1 discloses that her husband was indebted to the accused. She has also admitted that still that debt is not discharged. But that is not weighty enough to reject her testimony. Prior to the occurrence, there was an occurrence and in this connection, PW-1's husband had given a police complaint against the accused (see Ex.P-6 F.I.R). So by 2.9.2007, bad blood was brewing between both sides. Motivate is a double-edged weapon. It could be either way. Now in the facts and circumstances of this case, the said aspect clouds the veracity of the evidence of PW-1.

24. 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's case (supra). 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." सत्यमेव जयते

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 (CrL.) 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 confirmity 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)."

25. Now on this aspect, we will revert to the case before us.

26. No doubt, PW-11 is a Deputy Superintendent of Police, but the point is whether then he was statutorily qualified to investigate this case registered under SC&ST (P.A.) Act, 1989. There is no record to show that a specific order empowering him to investigate this case has been passed by the District Superintendent of Police taking into account his special qualification as prescribed under the Rules. Further, nowhere in his evidence, PW-11 would say that he has been so empowered. In such circumstances, Periyasamy's case squarely applies to this case.

27. In this case, FIR has been registered on 3.9.2007 by PW-10 Inspector of Police. On the same day, PW-11, D.S.P., took up his investigation. Admittedly, he has completed his investigation and filed the Final Report before the Court only on 17.10.2007. It is clear that it is beyond 30 days.

28. In this connection, it is relevant here to extract what is stated in paragraph-36 in Periyasamy's case, which runs as under:-

"36. As per Rule 7(2), the investigation has to be completed within 30 days. Now in this case PW-15 took up his investigation on 25.4.2007. He has filed the Final Report before the concerned Court only on 10.9.2007. It is far beyond 30 days. The Act gave him 30 days, but he took more than 3 months to complete the investigation."

29. Thus, the prosecution has failed to establish the charge under Section 3(1)(x) of SC&ST (P.A.) Act, 1989.

30. Next we will go to the next charge framed under Section 506(ii) of IPC.

31. PW-1 says that the accused had threatened to burn her family if PW-1's husband is not made to withdraw the case given as against him.

32. Chapter XXII of Indian Penal Code, 1860 deals with certain kinds of criminal intimidation. Section 506 IPC is a punishing Section. In this case, admittedly, at the time of the alleged occurrence, the accused was not in possession of any lethal weapon much less any weapon nor he possessed any corrosive substance nor he carry any Kerosene Tin or Petrol Tin or a country made bomb nor a match box. There are lethal words. Mouth is a dangerous weapon. But they cannot be equated to lethal weapons so as to attract Section 506(ii) IPC.

33. The intention of the accused should be such that he wanted to instill fear in the mind of the victim. But, the evidence of PW-1 did not satisfy such a requirement. That apart, in this respect, PWs-1, 3 and 5 were not consistent in their evidence. Thus, the charge under Section 506(ii) IPC has also fallen to the ground.

34. Thus, this Criminal Appeal is allowed. The conviction and the sentences imposed on the appellant under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act 1989 and under Section 506 (ii) IPC are set aside. The accused is acquitted. The fine amount shall be refunded to him.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Svn

Copy to:

1. The Special Judge
under SC&ST (P.A.) Act/
Principal Sessions Judge,
Coimbatore.
2. The Judicial Magistrate, Palladam.
3. The Additional Public Prosecutor,
High Court, Madras.
4. The Dy. Superintendent of Police,
Palladam.
5. The Inspector of Police,
Kamanaicken Palayam Police Station,
Tiruppur Rural District.
6. The Superintendent,
Central Prison,
Coimbatore.

+1 cc to Mr.C.D.Johnson Advocate sr.8273/16

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