

BAIL SLIP

That the appellants herein/Accused viz., (1) Kennedy (M/45) S/o.Rajan, (2) Kathiravan(M/40) S/o.Rajan, were directed to be released on bail as per the order of this Court dt.1.10.2010 and made in MP.1 of 2010 in CrI.A.No.584/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.584 of 2010

1. Kennedy
2. Kathiravan .. Appellants/Accused 1 & 2

Vs.

State rep. by
Deputy Superintendent of Police,
Kallakurichi Division, Villupuram District.
(Crime No.459 of 2007,
Kachirapalayam Police Station) .. Respondent/Complainant

Criminal Appeal filed under Section 374(2)Cr.P.C., against the judgment dated 03.09.2010 in S.C.No.96 of 2009 on the file of the Special Court (Principal Sessions Court), Villupuram.

For appellant : Mr.S.Vadivel Murugan
For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 03.09.2010 passed in S.C.No.96 of 2009 on the file of the Special Court (Principal Sessions Court), Villupuram, in and by which, the appellants/A1 and A2 were convicted and sentenced as tabulated hereunder:

Sl.No.	Conviction under Section	Sentence of imprisonment / Fine
1	Section 294(b) IPC	Fine Rs.1,000/- each, in default, each to undergo 15 days simple imprisonment

Sl.No.	Conviction under Section	Sentence of imprisonment / Fine
2	Section 506(i) IPC	Fine Rs.10,000/- each, in default, each to undergo three months simple imprisonment
3	Section 3(1)(x) of SC and ST (Prevention of Atrocities) Act	one year rigorous imprisonment each and fine of Rs.10,000/- each, in default, each to undergo six months rigorous imprisonment

2. The gist of the prosecution case leading to conviction of the appellants/A1 and A2 is that P.W.1/de-facto complainant, namely Selvi, is a "Hindu Malayali" and she is a resident of Vadakkanandhal Village. She is residing near the house of the appellants/A1 and A2 and very often, the appellants used to dump the garbage and other decayed particles near the kitchen of P.W.1. This was questioned by P.W.1 and enraged over the same, on 27.10.2007 at about 1 p.m., the appellants/A1 and A2 have blocked the pathway to the house of P.W.1 by keeping the thorny bushes of the trees. Hence, P.W.1 questioned them as to why they are harassing her. Enraged over the same, they have entered into the house of P.W.1 and scolded her in filthy language by referring her as "Hindu Malayali" and by scolding her so, A1 made an attempt to attack P.W.1 with stones and A2, by abusing her in filthy language, made an attempt to assault her with stick. On witnessing the attack, P.W.2 Kannan, one Manokaran and one Moorthy, prevented the appellants/A1 and A2 from attacking P.W.1. Thereafter, the appellants left the place by uttering, "they will not leave her without killing her". Since P.W.1's husband was out of station, after his arrival, on the next day, P.W.1 went to the Police Station along with her husband and lodged Ex.P-1 complaint, dated 28.10.2007. P.W.5 Inspector of Police received the said complaint at about 6 p.m. on that day from P.W.1 and registered a case in Crime No.459 of 2007 for the offences under Sections 294(b), 506(i) IPC and Section 3(1)(x) of the SC and ST (Prevention of Atrocities) Act. Ex.P-4 is the FIR. Thereafter, P.W.5 forwarded the copy of the complaint/FIR to the jurisdictional Magistrate and also to his higher official, subsequent to which, PW.7 Deputy Superintendent of Police, on receipt of the complaint/FIR, took up the case for investigation and went to the place of occurrence at about 9 p.m. along with P.W.4 Ravi and one Mottiah Pillai. P.W.7 prepared Ex.P-3 observation mahazar and drew Ex.P-6 rough sketch and recorded the statement of P.W.1-defacto complainant, one Manokaran, P.W.2 Kannan, Moorthy, Parvathi, Ravi and Mottiah Pillai. Thereafter, he submitted an application to the Revenue

Divisional Officer as well as to the Tahsildar concerned to ascertain the community of P.W.1 and the appellants. On 07.11.2007, P.W.7 examined and recorded the statement of the concerned RDO and obtained a report with regard to the community of P.W.1. On 19.11.2007, he recorded the statement of P.W.3 Krishnasami (Tahsildar) and obtained a report with regard to the community of the appellants. The community status report revealed that P.W.1 belongs to "Hindu Malayali" community and the appellants/accused belong to Hindu-Saaliyar community. Thereafter, he examined P.W.6 RDO Vanitha. After completion of all formalities and after concluding the investigation, P.W.7 filed charge-sheet before the trial Court. The case was taken on file in S.C.No.96 of 2009 by the trial Court. During the course of trial, on the side of prosecution, P.Ws.1 to 7 were examined and Exs.P-1 to P-6 were marked. When the appellants/A1 and A2 were questioned under Section 313 Cr.P.C., they denied their complicity in the crime. They neither examined any witness nor marked any document. Upon hearing the submissions of both sides and considering the oral and documentary evidence available on record, the trial Court convicted and sentenced the appellants/A1 and A2 as tabulated above. Challenging the said judgment of conviction and sentence, the appellants/A1 and A2 have filed this appeal.

3. When the appeal is taken up for hearing, learned counsel for the appellants/A1 and A2 submitted that the prosecution has not produced any document to establish the fact that P.W.1/de-facto complainant/victim belongs to SC/ST community. In fact, the community status report produced by the prosecution, which is marked as Ex.P-5 report of the victim, in which, it is indicated that she is "Hindu Malayali". Since the prosecution failed to establish the caste/community of P.W.1 by producing documentary evidence, on this lone and sole ground, the entire case of the prosecution gets vitiated.

4. Another ground submitted by learned counsel for the appellants/A1 and A2 is that as per Rule 7(1) of the SC and ST (Prevention of Atrocities) Rules, in respect of the offence committed under the SC and ST (Prevention of Atrocities) 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.7 DSP to investigate the case. Since P.W.7 investigating officer was 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 these reasons, learned counsel prayed for acquittal of the appellants/A1 and A2 by allowing the appeal.

5. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police submitted that P.W.1/de-facto complainant belongs to ST community and in order to prove her community, the report of P.W.3 Tahsildar and P.W.6 RDO were marked as Exs.P-2 and 5. Hence, learned Additional Public Prosecutor submitted that it is incorrect to state that the prosecution has failed to prove the case beyond reasonable doubt and he prayed for confirming the conviction and sentence imposed on the appellants and to dismiss the appeal.

6. While keeping in mind the above submissions made on either side, I have anxiously considered the same and perused the materials available on record.

7. It is the main submission of the learned counsel for the appellants/A1 and A2 that the prosecution has failed to prove that P.W.1/de-facto complainant/victim belongs to SC/ST community. But, according to the prosecution, by producing Exs.P-2 and P-5, they have established that P.W.1 belongs to SC/ST community. Hence, it would be appropriate to see the contents of Exs.P-2 and P-5. In Ex.P-2 report pertaining the caste/community status of the appellants/A1 and A2, it is referred as "Hindu Saaliyar" community. In Ex.P-2, it is indicated that P.W.1 belongs to "Hindu Malayali" community, and it was further stated that the proof for the same has to be produced by RDO. In Ex.P-5 pertaining to P.W.1, it has been indicated that she belongs to "Hindu Malayali" community. Even in the complaint Ex.P-1 given by P.W.1, she had stated that she belongs to "Hindu Malayali" community and the appellant/A1 and A2 scolded her in filthy language by referring the said community of her's. She did not say so in the said complaint that she belongs to SC/ST community and she has simply stated therein, referring her as "Hindu Malayali" and that the appellants scolded her in filthy language uttering so. Though the community status reports of the appellants/A1 and A2 and P.W.1 were marked as Exs.P-2 and P-5, it is not clear as to whether she belongs to SC/ST community. Hence, I am of the opinion that the prosecution has failed to prove through tangible evidence with regard to the community which P.W.1 belongs to. Unless it is stated in the complaint to the effect that he/she belongs to SC/ST community and knowing fully well that the accused intentionally insulted or intimidated with intent to humiliate the complainant in a place within public view, a person cannot be prosecuted for the offences under the SC and ST (Prevention of Atrocities) Act. In the instant case, it has been stated that the complainant is only "Hindu Malayali" and she has not stated as to whether she belongs to SC/ST

community or not. Therefore, the very launching of the prosecution itself under the provisions of SC and ST (Prevention of Atrocities) Act, is vitiated and not legally sustainable. Therefore, on this short ground, I am of the considered view that the appeal has to be allowed. In this regard, it is useful to refer 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."

8. Further, in the decision of the Bombay High Court reported in 1992 (2) Mh.L.J. 36 (Ashabai Ganeshrao Khote and others Vs. State of Maharashtra), relied on by the learned counsel for the appellants, wherein, in similar facts and circumstances, the Bombay High Court acquitted the accused therein in the absence of proof that the complainant therein belongs to SC/ST community or not, and it was further held that in the absence of the ingredients of Section 3(1)(x) of the said Act in the complaint therein, the accused therein were acquitted by the Bombay High Court.

9. In this case, there is no allegation in the complaint Ex.P-1 to attract the offence under Section 3(1)(x) of the said Act. Similarly, while deposing evidence before the trial Court, P.W.1 had stated that the appellants had scolded her by referring her name as Hindu Malayalee, but she has not stated as to whether she belongs to SC/ST or not. Therefore, on this sole ground, the appellant is entitled for acquittal.

10. Further, with regard to the contention of the learned counsel for the appellants/accused that there is no allegation in Ex.P-1/complaint so as to attract the offence under Section 3

(1)(x) of the SC and ST Act, it is seen that there is no allegation in the complaint lodged by P.W.1/complainant to show as to whether the appellants belong to SC/ST community or P.W.1 belongs to SC/ST community, as well as there is no evidence to show that the appellants belong to SC/ST community. There is no averment even in Ex.P-1 complaint to the effect that the appellants 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, even the evidence of P.W.1/complainant cannot be relied upon. Under such circumstances, the trial Court ought to have acquitted the appellants/A1 and A2, by negating the evidence of P.W.1.

11. That apart, as far as non-following of Rule 7(1) of the S.C. and S.T. (Prevention of Atrocities) Rules is concerned, it is to be seen that the said Rule 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.

12. In the above context, it is worthwhile 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 as to how the trial is legal, when there is no evidence in this case to show that P.W.7 DSP had been authorised in writing to investigate the case under the said Rules. Therefore, the entire investigation would stand vitiated.

14. The principles laid down by the Apex Court in the above discussed decisions, are squarely applicable to the facts of the present case, as the basic ingredients in the complaint have been absent and as the community of P.W.1 (SC/ST) had not been clearly established by the prosecution.

15. For the foregoing reasonings, the appeal is allowed, setting aside the impugned judgment of conviction and sentence imposed on the appellants/A1 and A2 and they are acquitted of the charges framed against them. The bail bond(s) if any executed by them shall stand cancelled. The fine amount(s) if paid by them, shall be refunded.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

Copy to

1. The Special Judge (Principal Sessions Judge), Villupuram.
2. The Public Prosecutor, High Court, Madras.
3. Deputy Superintendent of Police,
Kallakurichi Division,
Villupuram District.
(Crime No.459 of 2007,
Kachirapalayam Police Station)
- 4.The Superintendent of Central Prison,
Cuddalore.

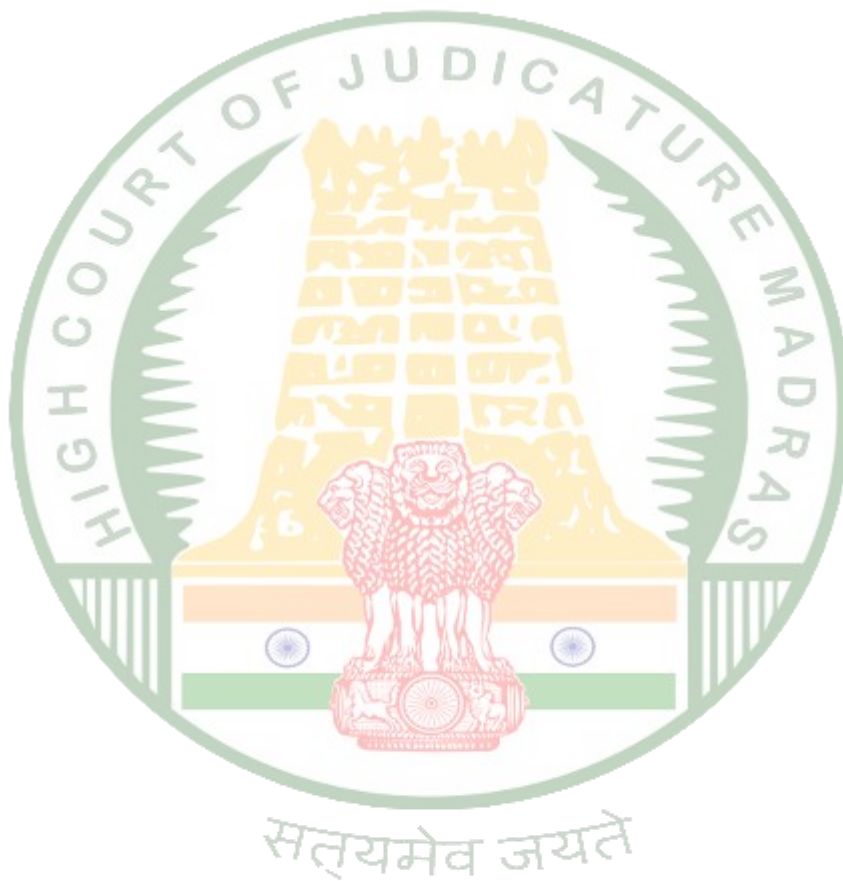
5.The Public Prosecutor, High Court,
Madras.

6. The Record Keeper, Criminal Section, High Court, Madras.

+1 cc to M/s.C.Vadivel Murugan,advocate,sr.48619.

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