

Bail Slip:- The appellants 1 & 2 i.e. Muruganantham, Gopal @ Gopalakrishnan in CrI.A.No.758 of 2007 (Accused in S.C.No.24 of 2006 on the file of Special Court and Principal Sessions Court, Coimbatore) were released on bail vide order of this court dated 18.8.2007 made in M.P.No.1/2007 in CrI.A.No.758 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

CrI.A.No.758 of 2007

1 Muruganantham
2 Gopal @ Gopalakrishnan ... Appellants/Accused

Versus

State: Rep. by
The Inspector of Police
Pollachi Taluk Police station,
Coimbatore District. ...Respondent/Complainant
(Cr.No.208/2005).

Criminal Appeal filed under Section 374 of Cr.P.C to set aside the Judgment passed by the learned Special Judge/Principal Sessions Judge, Special Court/Principal Sessions Court, Coimbatore in Spl. Case No.24 of 2006 dated 30.07.2007.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.R.Sekar
Govt. Advocate (CrI.side)

JUDGMENT

A-1 and A-2 in Special Case No.24 of 2006 on the file of the Special Court under SC/ST (PA) Act/Principal Sessions Court, Coimbatore are the appellants.

2. A-1 and A-2 were convicted and sentenced as under:

Conviction	Sentence
(i) Sec.3(1) (x) of SC/ST Act	6 months R.I. and fine Rs.1000/- i/d 2 months R.I.
(ii) 323 I.P.C.	Fine Rs.1000/- i/d 2 months R.I.
(iii) 506(ii) I.P.C.	One year R.I. and fine Rs.1000/- i/d 2 months R.I.

Both the sentences were directed to run concurrently.

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

(1) PW.1 belongs to Sundarapuram in Pollachi Taluk in Coimbatore district. He belongs to Hindu - 'Sakkilia' community. It is a scheduled caste (See Ex.P3 Community certificate issued by P.W.3 Tahsildar). A-1 and A-2 are brothers. They also belongs to the same village. They belongs to Hindu- 'Konguvellala' community (See Ex.P4 and P5 community certificates issued by P.W.3).

(2) There was strong enmity between P.W.1 and A-1 and A-2. On 26.5.2005 at about 9 a.m., in front of P.W.1's house, intending to insult P.W.1, A-1 and A-2 called P.W.1 by his caste name. Further, A-1 slapped P.W.1, while A-2 assaulted him on his left thigh with M.O.3 coconut stick. Thereafter, A-1 and A-2 left the place leaving their T.V.S. moped.

4. On the same day, at about 11.45 a.m. P.W.12 S.I. of Police, Pollachi Police station visited Government hospital, Pollachi and recorded Ex.P1 Statement from P.W.1. Based on Ex.P1, he registered this case in Cr.No.208/2005 under sections 3(1) (x) SC/ST (PA) Act, 323 and 506(ii) of I.P.C. (Ex.P2 F.I.R.). He sent the F.I.R. to D.S.P., Pollachi Sub division for investigation.

5. Gopalsamy, then D.S.P., Pollachi Sub division took up his investigation. He visited the scene place. In the presence of witnesses, he had prepared Ex.P13 Observation Mahazar. Drew Ex.P14 Rough sketch of the scene place. In the presence of witnesses, he seized M.O.1 T.V.S. Moped under Ex.P15 Mahazar. He examined the material witnesses and recorded their statement under section 161 Cr.P.C. On the same day, at about 10.30 a.m. at the Pollachi bus- stop, he arrested A-1 and A-2. On the next day, he seized M.O.3 coconut stick under Ex.P16 Mahazar from a coconut farm.

6. In the meanwhile, at the Government hospital, Pollachi P.W.2 treated P.W.1 for the injuries (Ex.P2 Wound

certificate). After Gopalsamy, on 21.7.2005 P.W.13 Mr.Rajangam, D.S.P. continued the investigation. He obtained community certificate for PW.1, A-1 and A2 from P.W.3. Completing the investigation, on 31.8.2005, P.W.13 filed the final report against A-1 and A-2 for offences under section 3 (1) (x) of SC/ST (PA) Act r/w 323, 506(ii) I.P.C. in the committal Court.

7. The learned committal Magistrate committed the case to the Court of Special Judge under SC/ST (PA) Act/Principal Sessions judge, Coimbatore after complying the requirement under section 207 Cr.P.C.

8. The learned Special Judge after hearing both sides and on perusal of the case records framed charges as against A-1 and A-2. They pleaded not guilty to the charges.

9. To substantiate the charges, prosecution examined P.Ws.1 to 13, marked Ex.P1 to P6 and exhibited M.Os.1 to 3.

10. When the accused were examined under Section 313 Cr.P.C. on the incriminating aspects in the prosecution evidence, they denied their complicity in this case. There is no defence evidence.

11. Appreciating the said evidence and considering the arguments of both sides, the learned Special Judge recorded conviction and awarded sentence as already stated.

12. The learned counsel for the appellants would contend that prosecution has thoroughly failed to establish the charges framed as against the accused beyond all reasonable doubts. There is material variation in the F.I.R. and in the evidence of P.W.1. There is inconsistency in the evidence of P.W.1 and in the F.I.R. as to the overtact attributed as against A-1 and A-2. Further, there is no corresponding medical evidence as to the overtact attributed as against A-1 and A-2.

13. The learned counsel for the appellants contended that in the facts and circumstances, Section 506(ii) I.P.C. is not attracted. Words, however, lethal unaccompanied by any weapon will not amount to criminal intimidation under section 506(ii) I.P.C. Admittedly, in this case, even as per the prosecution version, at the time of occurrence either A-1 or A-2 has not possessed any dangerous weapon. M.O.3 coconut stick will not be a dangerous weapon.

14. The learned counsel for the appellants also contended that prosecution under SC/ST (PA) Act is vitiated because the mandatory provisions of Rule 7 framed under the said Act has been flouted. As per Rule 7 of the said Act, a D.S.P.

as defined in the said Rule alone can investigate the case. However, in this case, there was no specific order empowering either Gopalasamy, D.S.P. or P.W.13 to investigate this case has been issued by the Superintendent of Police, Coimbatore Rural. Further, as per the said Rule, the Investigation officer has to complete the investigation within 30 days of registration of the case. But in this case, investigation has been completed with a delay of 95 days.

15. On the otherhand, the learned Government Advocate submitted that A-1 and A-2 have insulted P.W.1 in public view by calling him by his caste. P.W.1 belongs to SC community. A-1 and A-2 belongs to a non-SC/ST community. Thorough investigation has been done by two D.S.Ps. There is no flaw in the investigation. The injuries having been suffered by P.W.1 at the hands of A-1 and A-2 have been spoken to by P.W.2 Doctor. In the circumstances, appreciating the evidence adduced, the Special Judge has rightly convicted the accused and appropriately punished them.

16. I have anxiously considered the rival submissions, perused the impugned judgment and the entire materials on record.

17. Now, the question is whether the prosecution has proved the charges under Sections 3(1) (x) SC/ST (PA) Act, 323 and 506(ii) I.P.C. as against A-1 and A-2 beyond all reasonable doubts ?

18. The occurrence is alleged to have taken place on 26.6.2005 at about 9 a.m., before the house of P.W.1. A-1 and A-2 who belongs to 'Konguvellala' community is alleged to have called P.W.1 who belongs to a scheduled caste by his caste name with an intention to insult him in public view and A-1 slapped him, while A-2 assaulted P.W.1 with M.O.3 coconut stick.

19. In this case, P.W.1 is the author of F.I.R., eye witness and also a victim. The specific version of P.W.1 in the F.I.R. is that A-1 had slapped him while A-2 had assaulted him with M.O.3. However, both in chief and in cross examination, P.W.1 would say that A-2 had caught hold of him, while A-1 assaulted him with M.O.3. There is no evidence as to the injury alleged to have been caused by A-2 on the right thigh of P.W.1. Thus, in his evidence before the trial Court, P.W.1 changed the overtact and also the nature of injury suffered at the hands of A-1 and A-2. Thus, an offence under Section 323 I.P.C. is not established.

20. A-1 and A-2 were alleged to have threatened to kill P.W.1. Admittedly, at the time of occurrence, either A1 or A-2 was in possession of any lethal weapon. Words, however lethal will not be equivalent to lethal weapons. The facts and

circumstances of the case is such that their alleged overtact will not have the effect to create immediate threat in the mind of P.W.1. Thus, an offence under Section 506(ii) I.P.C. is not attracted.

21. For an offence under section 3(1) (x) of SC/ST (PA) Act, prosecution has to prove that a member of non-Scheduled caste/ Scheduled Tribe community has insulted a member of Scheduled caste/Scheduled tribe community in public view naturally in a public place.

22. Rule 7 framed under the said Act specifies type of the investigation officer and also the time limit within which the investigation has to be completed and review of the case by higher officials.

23. In this connection, it is profitable to notice the said Rule 7. It 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 caste 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.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigations done by the investigating officer.'

24. Rule 7 (1) specifies that a Police Officer not below the rank of D.S.P. who is having particular experience alone can investigate a case registered under SC/ST (PA) Act. He should be empowered to investigate the case by an order passed by the Superintendent of Police if it is Rural and if it

is in Metropolitan city, such an order can be passed by a Deputy Commissioner of Police. Thus, D.S.Ps. who are so qualified under the Rule 7(1) of the said Act alone can investigate the case registered under the said Act. Thus, all D.S.Ps. cannot investigate a case registered under SC/ST (PA) Act.

25. In the instant case, initially, the case was investigated by Gopalswamy, D.S.P., Pollachi Sub Division. There is no written order as required under the said Rules has been placed before the Court. After him, P.W.13 Rajangam, D.S.P., Pollachi Sub-Division investigated the case. No written order has been passed by the Superintendent of Police, Coimbatore Rural empowering him to investigate the case as required under the said Rule 7. In his evidence, he did not say that he was so empowered.

26. As per Rule 7(2) of the said Act, the investigation of a case registered under SC/ST (PA) Act must be completed within 30 days from the date of registration of the case. In this case, P.W.12, S.I. of Police registered this case in Cr.No.208 of 2005 under section 3(1) (x) of SC/ST Act. He completed the investigation only on 31.8.2005. Thus, he took nearly 90 days to complete the investigation.

27. Thus, in view of the violation of Rule 7 framed under the Act, this prosecution is vitiated.

28. In view of the foregoing, prosecution has failed to prove the charges levelled against the accused beyond all reasonable doubts.

29. In the circumstances, this Criminal appeal is allowed. The conviction recorded and the sentence awarded by the trial Court under sections 3(1) (x) of SC/ST (PA) Act, 323 and 506(ii) of I.P.C. are set aside. Appellants/A-1 and A-2 are acquitted from all the charges. Fine amount if paid, shall be refunded to them.

Sd/-

Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

1. The Special Judge under SC/ST (PA) Act/
Principal Sessions Judge, Coimbatore.

2. The Judicial Magistrate No.II
Pollachi

3. do thro the Chief Judicial Magistrate
Coimbatore

4. The Superintendent of Police,
Coimbatore Rural, Coimbatore.

5. The Superintendent,
Central Prison, Coimbatore

6. The Deputy Superintendent of Police,
Pollachi Sub Division, Pollachi.

7. The Inspector of Police,
Pollachi Taluk, Pollachi.

8. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.M.N. Balakrishnan, Advocate, sr. 60802

Crl.A.No.758 of 2007

GJ(CO)
kk 23/11



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