

Bail Slip

Crl.A.No.781 of 2007:- The Appellant/Accused namely Selvaraj was directed to be released on bail as per order of this court dated 23.8.2007 made in Crl.M.P.No.1/2007 in Crl.A.781 of 2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02-11-2016

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

Criminal Appeal No.781 of 2007

Selvaraj ... Appellant/ Accused

vs.

The State of Tamil Nadu
Deputy Superintendent of Police,
Arcot Town Police Station,
Arcot, Vellore District.
(Crime No.714 of 2006)

... Respondent/ Complainant

Criminal Appeal preferred under Section 374 (2) of Cr.P.C., against the judgment dated 26.7.2007 in S.C.No.1 of 2007 passed by the learned Principal Sessions Judge, Vellore District.

For Appellant : Mr.M.Manobala for
Mr.N.S.Sivakumar.

For Respondent : Mr.R.Sekar,
Government Advocate (Criminal Side).

J U D G M E N T

The sole accused in the Special Sessions Case No.1 of 2007 on the file of the Special Court under SC/ST (PA) Act, 1989 on the file of the learned Special Judge/Principal Sessions Court, Vellore, is the appellant.

2. The accused was convicted and sentenced as detailed below:-

S.No.	Conviction	Sentenc
1.	Section 341 IPC	Fine of Rs.500/-, i/d 1 week R.I.

S.No.	Conviction	Sentenc
2.	Section 506 (ii) IPC	6 months R.I., and fine of Rs.500, i/d 2 months R.I.
3.	Section 354 IPC r/w Section 3(1)(xi) SC/ST (PA) Act	1 year R.I., and fine of Rs.1,000/- i/d 6 months R.I.

The sentences were directed to run concurrently.

3. The case of the prosecution, in brief, runs as under:-

(1) PW-1 belongs to Pooncholai village in Vellore District. She is an 'Irula', a Scheduled Tribe. (see Ex.P-3 Community Certificate). The accused is a 'Naidu', a Backward Class (see Ex.P-2 Community Certificate);

(2) On 30.04.2006, at about 5 p.m., when PW-1 came via a Plantain Thoppu in her village, the accused attempted to misbehave with her. On the same day, at about 8 p.m., the accused came to her house, threatened to kill her, if she reveal the event to any other person;

(3) PW-1 lodged Ex.P-1 complaint with PW-7 S.I at the Arcot Town Police Station. He registered this case (Ex.P-6 FIR). He added Section 3(1)(xi) SC/ST (PA) Act (Ex.P-7 Alteration Report). Thereafter, PW-8/D.S.P., Katpadi took up his investigation. He visited the scene place. In the presence of PWs-4 and 5, he prepared Ex.P-8 observation mahazar. Drew Ex.P-9 rough sketch of the scene place. Examined PW-1 and other material witnesses and recorded their statement under Section 161 Cr.P.C. On 5.5.2006, at about 9.30 a.m., near Poottuthakku Kumar Tea Shop, he arrested the accused and sent him to judicial custody. After PW-8, PW-9/Assistant Superintendent of Police, Katpadi continued the investigation. He examined the Revenue Officials who gave the Community Certificates. Concluding the investigation, on 22.9.2006, he filed the Final Report in the Committal Magistrate for offences under Sections 341, 354, 506 (ii) IPC r/w Section 3(1)(xi) of SC/ST (PA) Act.

(4) The learned Magistrate, after taking cognizance on the said Final Report, furnished copies of documents under Section 207 Cr.P.C., to the accused. And committed the case to the Special Court under SC/ST (PA) Act/Principal Sessions Court, Vellore.

(5) The learned Special Judge, after hearing both and on consideration of the case-records, framed charges under Section 354 IPC r/w Section 3(1)(xi) of SC/ST (PA) Act, 1989 and under Sections 506(ii), 341 IPC. The accused pleaded not guilty to the charges;

(6) To substantiate the charges, prosecution examined PWs-1 to 9, marked Exs.P-1 to P-9;

(7) When the accused has been examined on the

incriminating aspects in the prosecution evidence under Section 313 Cr.P.C., he denied his complicity in this case. No defence evidence on his side;

(8) Considering the said evidence, the Trial Court has convicted and sentenced the appellant as already stated.

4. The learned counsel for the appellant contended that as PW-1's son has been sent out of job by the accused, PW-1 has implicated the accused in this case. Her evidence does not deserve credence. There are material variations as to the allegations in the FIR and in her evidence. Prosecution has failed to establish the charges beyond all reasonable doubts.

5. The learned counsel for the appellant also contended that PWs-8 and 9/DSPs were not specifically empowered under Rule 7(1) of the SC/ST (PA) Act to investigate this case. Further, as per the said Rule, the investigation was not completed within 30 days. There is violation of the mandatory Rules. Thus, this prosecution is vitiated.

6. The learned Government Advocate contended that appreciating the evidence of PW-1 and other witnesses, the Trial Court has rightly convicted the accused and punished him.

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

8. Now the question is whether the charges under Sections 341, 506(ii) IPC and Section 354 IPC r/w Section 3(1) (xi) of SC/ST (PA) Act have been proved by the prosecution beyond all reasonable doubts.

9. PW-1 is a ' Irula' woman, a Scheduled Tribe while the accused is a ' Naidu' , a member of Backward Class.

10. The prosecution version of the case is that on 30.4.2006, at about 5 p.m., near a plantain Thoppu in her village, the accused is alleged to have tried to pull the saree of PW-1 and subsequently, at about 8 p.m., near her house, he has criminally intimidated her.

11. The evidence of PW-1 is not crystal clear as to the offences alleged as against the accused with regard to his attempt to outrage her modesty. There is material variation as to the allegation in her complaint and in her evidence before the Special Court. There is no evidence to show wrongful restraint has been committed by the accused. Thus offences under Sections 354, 341 IPC are not made out.

12. Even as per the prosecution version, at the time of occurrence, the accused was not having any weapon. Words,

however, lethal is not equivalent to a lethal weapon. In order to attract an offence under Section 506(ii) IPC, the words spoken is such that it should create immediate fear in the mind of the victim. But, in the instant case, it is not so. So, an offence under Section 506(ii) IPC is also not made out.

13. This prosecution has been launched under SC/ST (PA) Act for an offence under Section 3(1)(xi) of the said Act. Rule 7 framed under this Act specifies the type of Investigation Officer and also the time limit within which the investigation is to be completed.

14. The said Rule 7 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 Investigating Officer."

15. Rule 7 (1) specifies that a Police Officer not below the rank of a D.S.P. having particular type of 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 Area and by a Deputy Commissioner of Police, if it is a Metropolitan City. Thus, D.S.Ps who are so qualified under Rule 7(1) of the Act

alone can investigate a case registered under the said Act. Thus, all D.S.Ps cannot investigate a case registered under SC/ST (PA) Act. Further, such a Police Officer has to be specifically appointed by the higher Officer.

16. In the present case, first the case was investigated into by PW-8 Kuppusamy, D.S.P. Subsequently, PW-9/Balakrishnan, Assistant Superintendent of Police. There is no written order showing that they were so empowered under Rule 7 (1) to investigate the case.

17. In the instant case, initially, the case was investigated by PW-8. There is no written order as required under the said Rules has been placed before the Court. After him, PW-9/A.S.P., Katpadi Sub-Division, Vellore District investigated the case. No written order has been passed by the Superintendent of Police, Vellore 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.

18. As per Rule 7(2) of the 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.

19. In this case, the FIR was registered on 2.5.2006. However, the investigation was completed and Final Report was filed only on 22.9.2006. It is well beyond 30 days of the registration of the case.

20. Thus, in view of the violation of Rule 7 this prosecution is vitiated.

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

22. In the circumstances, this Criminal Appeal is allowed. The conviction recorded and the sentence awarded by the Trial Court are set aside. The accused is acquitted under Sections 341, 506 (ii) and 354 IPC r/w Section 3(1)(xi) SC/ST (PA) Act, 1989. Fine amount shall be refunded to him.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

Svn

To

1. The Judicial Magistrate
Arcot
 2. Do thro the Chief Judicial Magistrate
Vellore
 3. The Special Judge under SC/ST (PA) Act/
Principal Sessions Judge,
Vellore,
Vellore District.
 4. The Deputy Superintendent of Police,
Katpadi Sub-Division,
Vellore District.
 5. Inspector of Police,
Arcot Town Police Station,
Arcot, Vellore District.
 6. Superintendent of Police,
Vellore.
 7. The Public Prosecutor,
High Court, Madras.
 8. The District Collector
Vellorer
- 1 cc to Mr.N.S. Sivakumar, Advocate, Sr. 62690

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