

BAIL SLIP

CRL.A.No.197/2010

That the Appellant herein (Accused) Viz Suresh, S/o.Vasu Mudalian, was released on bail by the order of this court dated 24.03.2010, made in MP.1 of 2010 in Crl.A.No.197 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2017

CORAM

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.A.No.197/2010

Suresh

.. Appellant (Accused)

Vs.

State rep. by,
The Deputy Superintendent of Police
Thirukkivilur at Kandachipuram
Police Station, Villupuram District.
[Crime No.163/2006]

..Respondent (Complainant)

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the conviction made in SC.No.297/2008 by the learned Special and Principal Sessions Judge, Villupuram, vide order dated 08.03.2010 and to set aside the same.

For Appellant : Mr.P.Pazhamalai

For Respondent : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

The appellant herein is the sole accused in SC.No.297/2008 on the file of the Court of Special and Principal Sessions Judge, Villupuram. He stood charged and tried for the commission of the offence u/s.354, 506[i] IPC and section 3[1] [x] of the SC&ST [Prevention of Atrocities] Act, and the Trial Court, vide impugned Judgment dated 08.03.2010, has acquitted the appellant for the offences u/s.506[i] IPC and section 3[1] [10] of the SC/ST Act and convicted him for the offence u/s.354 IPC and sentenced him to undergo 1 year simple imprisonment and

to pay a fine of Rs.10,000/- with a default sentence of 3 months simple imprisonment. Challenging the said conviction and sentence, the present appeal is filed.

2 The facts of the prosecution case that are necessary for the disposal of this appeal, in brief, are as follows:-

[a] P.W.1 - Radhika is the victim. She is a resident of Thandavasamuthiram Village. She had studied upto 7th standard and after discontinuing her studies, she was in the habit of grazing goats on the Kosavanthangal Lake. She would state that she belonged to Hindu Irular Community and that she knew the appellant / accused very well. He belonged to Hindu - Mudaliyar community.

[b] On 15.08.2006 at about 13.00 hours, when she was grazing goats, appellant / accused came there in a drunken state and called P.W.1 his wife. When she warned him not to say so, appellant / accused pulled her hands and tore her blouse and also threatened her with dire consequences using her caste name. P.W.1, to escape from appellant / accused, ran away from the spot, fell down at the house of one Navappa Udayar and from there, went to her home and informed her father, P.W.5-Kasi. P.W.5 took his daughter P.W.1 to see one Kalyani at Dindivanam and since such person was not available, he took her to the Government Hospital at Villupuram. On 16.08.2006 at about 08.00 hours, on receipt of intimation from the hospital, P.W7-Sundararaju, Head Constable, attached to Kandachipuram Police Station, went to the hospital and received the complaint from P.W.1 under Ex.P.1.

[c] P.W.2-L.Sekar, was the Tahsildar, Gingee and on receipt of requisition from P.W.10-Jayakumar, Deputy Superintendent of Police, Tirukovilur, issued Community Certificate in respect of the appellant / accused herein, certifying that he belonged to Hindu-Thuluva Vellalar Community. The Community Certificate issued by him was marked as Ex.P.2.

[d] P.W.3-N.Vijayakumar, was the Revenue Divisional Officer, Dindivanam, on receipt of the requisition from P.W.10-Jayakumar, Deputy Superintendent of Police, Tirukovilur, issued Community Certificate in respect of P.W.1-Radhika, certifying that she belonged to Hindu - Irular Community. The Community Certificate issued by him was marked as Ex.P.3.

[e] P.W.4-Navappa Udayar was also a resident of Thandavasamuthiram Village and Pottery is his occupation. He had stated that he knew P.W.1 as well as the appellant / accused and that he does not know anything in respect of the case and the police did not enquire him.

[f] P.W.7-Kasi, father of the victim - P.W.1 [Radhika] also deposed on the same lines of P.W.1.

[g] P.W.6-Vanathaiyan, would state that he was a resident of Thandavasamuthiram Village and that he along with one James had attested the Observation Mahazar [Ex.P.4] prepared by the Police.

[h] P.W.7-Sundararaju, Head Constable attached to Kandachipuram Police Station would depose that on 16.08.2006 at about 08.00 hours, on instructions received from the Sub Inspector, he went to the Government Hospital, Villupuram and received the written complaint from P.W.1 and handed over the same to the Sub-Inspector of Police.

[i] P.W.8-Dr.T.Padmini, was the Assistant Medical Officer attached to the Government Medical College and Hospital, Villupuram. While she was on duty at the Casualty Ward, P.W.1-Radhika, aged about 17 years was brought by her father. When P.W.8 examined P.W.1, who informed that on 15.08.2006 at about 13.00 hours, a known person had torn her blouse with a blade and that when he tried to molest her, she escaped from his clutches. P.W.8 had found the following injuries on P.W.1:-

[1] An abrasion measuring 1 cm in length on the left chest caused due to use of a blade ; and [2] P.W.1 complained of pain on the tip of the middle finger of left hand.

P.W.8 also found that there were no external injuries. Ex.P.5 is the Accident Register issued by P.W.8.

[j] P.W.9-S.Jothi was the Sub Inspector of Police attached to Kandachipuram Police Station and on receipt of the complaint [Ex.P.1] from P.W.7-Head Constable, he registered a case in Crime No.163/2006 for the offences u/s.323, 354 IPC and u/s.3[1] [x] of the SC & ST [Prevention of Atrocities] Act. Printed FIR is marked as Ex.P.6. He despatched the originals of the complaint and the FIR to the jurisdictional Magistrate Court and the copies of the same to the higher officials.

[k] P.W.10-S.Jayakumar, Deputy Superintendent of Police, Tirukovilur, on receipt of the FIR in Cr.No.163/2006, took up investigation on 17.08.2006 after receiving appropriate orders from the District Superintendent of Police. He went to the place of crime and in the presence of P.W.6 and one James, he prepared the Observation Mahazar [Ex.P.4] and a Rough Sketch [Ex.P.7]. On the same day, he examined P.Ws.1, 5, 4, 6 and James and recorded their statements. He also sent requisitions

to P.W.2-Tahsildar, Gingee and P.W.3-Revenue Divisional Officer, Dindivanam, in order to ascertain the communities of the appellant / accused and P.W.1. During his enquiry, P.W.4-Navappa Udayar had stated that he had witnessed the occurrence. On his transfer, P.W.10 handed over the Case Diary to his successor.

[1] P.W.11-G.Stalin, the Deputy Superintendent of Police, took up the further investigation in the case and examined P.Ws.2 and 3 and recorded their statements and also received the Community Certificates in respect of the appellant/accused and P.W.1. P.W.11 examined Dr.Padmini [P.W.8] and recorded her statement. He also received the Accident Register [Ex.P.5]. P.W.11 examined P.W.9-Sub Inspector of Police and recorded his statement. Upon completion of investigation, he altered the case into one u/s.323, 354, 506[i] IPC and u/s.3[1][x] of SC and ST [Prevention of Atrocities] Act. The Altered FIR is marked as Ex.P.8. The appellant/accused was arrested and sent for judicial remand. After receiving opinion of the Government Advocate, he laid the Final Report against the appellant/accused for the offences u/s.323, 354 and 506[i] IPC and section 4 of the Tamil Nadu Prohibition of Women Harassment Act and section 3 [1][x] of the SC & ST [Prevention of Atrocities] Act. Learned Judicial Magistrate, Tirukovilur, took it on file in PRC.No.16/2007 and issued summons to the accused and on his appearance, furnished him the copies of the documents u/s.207 Cr.P.C. Finding that the case was exclusively triable by the Sessions Court, he committed the same to the Court of Special and Principal Sessions Judge, Villupuram, who took it on file in SC.No.297/2008 and on appearance of the appellant / accused, had framed the charge u/s.354 & 506[i] IPC and u/s.3[1][x] of the SC & ST [Prevention of Atrocities] Act and questioned him. The appellant / accused pleaded not guilty to the charges framed against him.

[m] Prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to 8.

[n] Appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence tendered by the prosecution and he denied the same as false. No defence evidence was let in.

[1] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, found that the prosecution had not made out any case against the appellant/accused for the commission of the offences u/s.506[i] IPC and section 3[1][x] of the SC/ST [Prevention of Atrocities] Act and acquitted him of the said charges. It,

however convicted and sentenced the appellant/accused as stated above and hence, this appeal.

3 Heard learned counsel for the appellant/accused and learned Additional Public Prosecutor. Perused the materials on record.

4 Much doubt arises about the prosecution case. P.W.4 has been examined by the prosecution to speak of having seen the accused pulling the hand of P.W.1 and of the accused having left the scene after abusing P.W.1 using her caste name and threatening her against complaining of his misdeeds. P.W.4 has turned hostile. In cross, P.W.1 has admitted to not informing of P.W.4 having witnessed the occurrence.

5 P.W.5 - father of P.W.1 / victim, in cross, has admitted to one Arumugam being the author of the complaint that the complaint was drafted in keeping with his instructions and that it was such person who had advised that abuse on caste lines be informed therein. The said Arumugam would be a material witness and the prosecution has failed to examine him. From the evidence of PW.5, it is clear that complaint pursuant to which FIR has been registered, is the product of deliberation. Quite rightly, P.W.4 has refused to falsely support the prosecution case. The registration of the case, one day subsequent to the alleged incident, only raises a further doubt on the genuineness of the prosecution case.

6 Hence, this Court is of the view that the impugned judgment of the Trial Court warrants interference.

7 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in S.C.No.297 of 2008 dated 08.03.2010 are hereby set aside and the appellant/accused is acquitted of the charge levelled against him. Fine amount, if any paid, shall be refunded to him.

8 It is reported that the appellant/accused is on bail. Bail bond executed by him, shall stand terminated.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

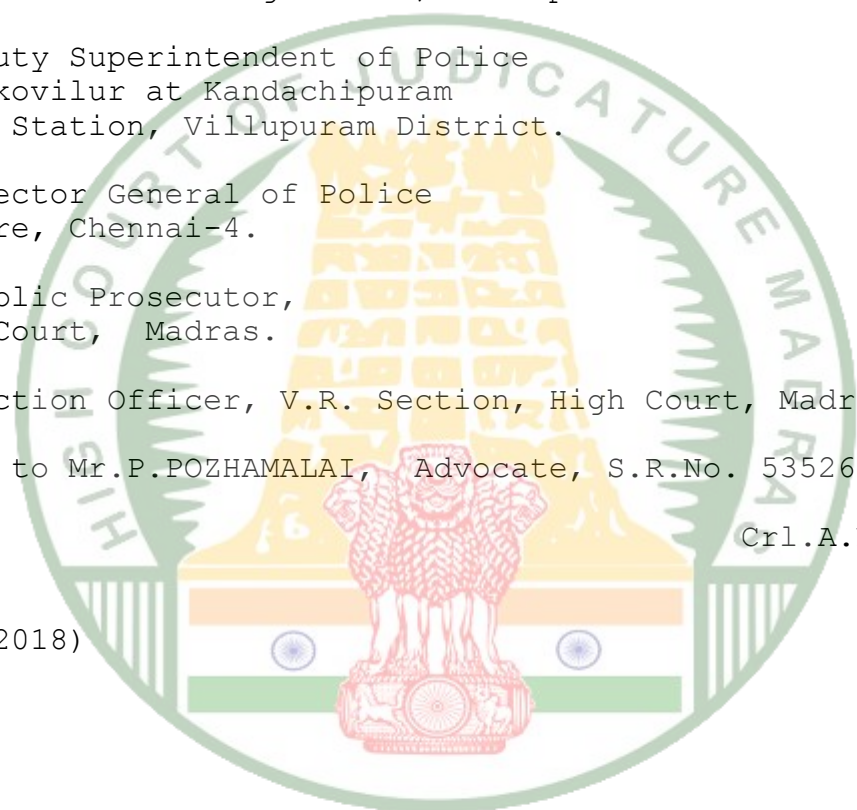
AP
To

- 1.The Special/Principal Sessions Judge,
Villupuram.
- 2.The Principal District and Sessions Judge
Villupuram.
- 3.The Judicial Magistrate, Tirukovilur.
- 4.The Chief Judicial Magistrate, Villupuram.
- 5.The Deputy Superintendent of Police
Thirukkivilur at Kandachipuram
Police Station, Villupuram District.
- 6.The Director General of Police
Mylapore, Chennai-4.
7. The Public Prosecutor,
High Court, Madras.
8. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.P.POZHAMALAI, Advocate, S.R.No. 53526

Cr1.A.No.197/2010

NM(CO)
TR(01/02/2018)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a horizontal band with the Indian national flag's saffron, white, and green stripes, and the Ashoka Chakra in the center. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a green circular border around the central image. At the bottom, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is inscribed in Devanagari script.

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