

BAIL SLIP

That the Appellant herein/Accused 1 to 3 Viz., Ganesan, S/o.Nallianna Gounder, 2.Manthiri @ Kuppusamy, S/o.Palaniappa Gounder and Palanisamy, S/o.Periyasamy were directed to be released on bail as per Order of this Court dated 20.07.2009 and in M.P.No.1 of 2009 in Crl.A.No.416 of 2009 on the file this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.416 of 2009

and

M.P.No.1 of 2009

1.Ganesan

2.Manthiri @ Kuppusamy

3.Palanisamy

... Appellants/Accused 1 to 3

Vs

State rep. By

The Deputy Superintendent of Police,

Velur Sub Division,

Velur, Namakkal District.

(Crime No.79/2008)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the the judgment of conviction dated 25.06.2009 in S.C.No.27 of 2008 on the file of Principal Sessions Judge, Namakkal and allow the appeal.

For Appellants : Mr.V.P.Sengottuvel

For Respondent : Mrs.M.F.Shabana,
Government Advocate (Crl. Side)

JUDGEMENT

The accused 1 to 3 in S.C.No.27 of 2008 on the file of the Principal Sessions Judge, Namakkal are the appellants in this appeal. They stood charged for an offence under Section 3(1) (x) of SC/ST Act and under Section 341 and 323 of IPC in S.C.No.27 of 2008. By judgment dated 25.06.2009, the Trail Court convicted the accused and sentenced them to undergo three years rigorous imprisonment with fine of

Rs.3,000/- in default to undergo three months rigorous imprisonment for the offence under Section 3(1)(x) of SC/ST Act, one month rigorous imprisonment each for the offence under Section 341 and six months rigorous imprisonment for offence under Section 323, of IPC and ordered the above sentences to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this appeal.

2. The case of the prosecution in brief are as follows:

P.W.1 is the injured witnesses in this case. He belongs to a Schedule Caste community. On 26.10.2008 at about 9.30p.m., while he was returning home from his work all the three accused who were sitting near one Manokaran's shop. At that time, the first accused was the President of Village Panchayat questioned his whereabouts. Then, P.W.1 enquired him about the distribution of free colour television to the village people, but, the first accused refuse to answer him, and abused him by calling his caste name, also beaten him with his hands then, P.W.1 fell down. At that time, P.Ws.2 and 3 also scolded him and attacked him with hands and legs and abused him by calling his caste name. Unable to bear the pain, P.W.1 started running and all the three accused chased and attacked him with stick and hands. On hearing the alarm of P.W.1, P.W.2, came to the scene of occurrence and tried to pacify them. Further, all the accused persons criminally intimidated P.W.1, and then ran away from the said place. After sometime, P.W.1, was admitted in the Government Hospital at Namakkal and took treatment for his injuries. On receipt of a memo from hospital P.W.13, Head Constable of Paramathi Police Station recorded the statement of P.W.1 in the hospital and P.W.15, Inspector of Police registered the First Information Report, Ex.P1, in Crime No.79 of 2008 for the offences under Section 341, 323, 506(i) of IPC and Section 3(1)(x) of SC/ST Act and forwarded same to the higher officials.

3. P.W.16, Deputy Superintendent of Police, took up the investigation and prepared the rough sketch, Ex.P11 and recorded the statement of other witnesses. Then, he recorded the statement of the doctor, P.W.12, who gave treatment to P.W.1 in the Government hospital and obtained Ex.P5, Accident Register from him. After completing the investigation, he filed charge sheet against the accused persons.

4. Based on the materials available on record, the Trial Court framed charges against the accused persons as stated supra and the accused denies the same. To establish the case, prosecution has examined 16 witnesses (P.Ws.1 to 16) and produced 13 exhibits (Exs.P1 to P13). No material objects were marked.

5. Out of the witnesses examined, P.W.1, is the injured witness in this case. According to him, while he was returning from his work, the Village Panchayat President along with others were sitting near the shop and the first accused enquired him about the place of his work and P.W.1 in turn asked him about the non-distribution of free colour television to the village people, and of being annoyed by that the first accused attacked him with his hands and abused him in filthy language. The other two accused also joined with first accused, attacked and abused him. P.W.2, came to the rescue of P.W.1 and pacified them. It is the specific case of the prosecution that the accused persons had abused P.W.1 by calling his caste name. P.Ws. 3, 4, 6, 7, 9 and 10 turned hostile, P.W.5, is the another eye witnesses to the occurrence had deposed to the effect that there had been a quarrel between P.W.1 and accused persons and the accused have beaten P.W.1 and abused him in filthy language. P.W.8, is the wife of P.W.1 and she had stated that she came to know about the occurrence through P.W.5. P.Ws.11 and 14, are the Tahsildars who had issued community certificate to P.W.1 and accused persons respectively. P.W.12 is the doctor who treated P.W.1 and issued Ex.P5, Accident Register finding the following injuries:

"A abrasion over 2 x 0.5cm on his left scabular region

Diffuse contusion on left chest"

and deposed that the injuries are simple in nature. As stated above, P.W.13, is the head constable, who recorded the statement of P.W.1, P.W.15, is the Inspector of Police, P.W.16 is the Deputy Superintendent of Police who conducted investigation.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., the accused denied the same, and they did not examine any witness nor marked any documents. Considering all the materials, trial Court convicted and sentenced the accused as stated above. Now, challenging the above conviction and sentence, the Appellants are before this Court, with this Appeal.

7. I have heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent.

8. Mr.V.P.Sengottuvel, learned counsel for the appellants would submit that except the interested testimonies of P.Ws.1 and 2 there is no other evidence supporting the case of the prosecution. Even in the evidence of P.W.1, there are lot of contradictions regarding place of occurrence and as who had beaten him. P.W.2, has also admitted in the cross examination that he does not know who has beaten P.W.1 and hence he cannot be said to be eye witnesses to the occurrence.

As per the complaint, P.W.1 had stated that the occurrence took place near one Manokaran's shop and P.W.2 came only after

hearing the alarm and admitted him in the hospital. Whereas, P.W.2, in his evidence had stated that he accompanied P.W.1 from the work place and he was very much present at the time of occurrence. P.W.2 had improved the case by stating that he accompanied P.W.1 which is totally incorrect. In so far as the offence under Section 3(1) (x) of SC/ST Act is concerned there is no evidence to show that the accused have abused P.W.1 by calling his caste name in the public view. There are contradictions in the evidences and in view of the same, the accused are entitled for acquittal.

9. Per contra, learned Government Advocate (Crl.side) would submit that P.W.1 is the injured witnesses and P.W.2 is also an eye witness to the occurrence and the presence of P.W.2 in the scene of occurrence is natural and the evidence cannot be disbelieved only on the ground that they are interested witnesses. Moreover, the medical evidence also corroborated the evidence of P.W.1 regarding the nature of injuries suffered. In the above circumstances, learned Additional Public Prosecutor would submit that the prosecution has proved his case beyond reasonable doubt and hence, seeks for dismissal of the appeal.

10. I have considered the rival submissions made on either side and perused the materials on record.

11. P.W.1 is the injured witness had deposed that on the occurrence date while he was returning from his work place at about 8.00p.m., all the three accused were standing near the shop belongs to one 'Anbu' and he had asked Al, being the President of Panchayat about the non-distribution of free colour television to his village and there had been a quarrel between them. In that the first accused slapped him with his hands and the other two accused have beaten him with hands and stick. They also abused him in filthy language and insulted him by calling his caste name. Then, P.W.2 came to the scene of occurrence and pacified them and all the three accused have chased P.W.1 and attacked him and he sustained injuries. P.W.2 took him to the Government hospital for treatment, thereafter, complaint had been lodged.

12. In the complaint, Ex.P1, P.W.1 had stated that the occurrence took place near one Manokaran's shop while he was returning alone from his work place at that time all the three accused quarreled with him and attacked him. Whereas, in the evidence he had deposed that the occurrence took place in two places, one near the shop of one 'Anbu' also who was examined as P.W.3. However, the said Anbu turned hostile, from the evidence of P.W.1, even the place of occurrence was not established by the prosecution. P.W.2, who is stated to be another eye witness to the occurrence, but had deposed to the effect that he does not know as to who had beaten P.W.1. P.W.2 had further stated that there were about 20 peoples present in the scene of occurrence but none of them were

examined by the prosecution, P.W.1 in his evidence had deposed that on hearing the alarm made by him P.W.2 came to the scene of occurrence. But, it is the evidence of P.W.2, that he has accompanied P.W.1, all along, and he was present in the scene of occurrence, which is totally contravening the evidence of P.W.1. P.W.5, who is stated to be another eye witness to the occurrence has admitted in the cross examination that after the occurrence only he visited the scene, and according to him only P.W.1's mother and wife took him to the hospital. As per the evidence of P.W.12, Doctor the injuries are simple in nature and they were likely to be occurred while the person falling from the cycle in a hard surface. Hence, the medical evidence also not corroborating the evidence of P.W.1, and there are material contractions in the evidences as well as witnesses.

13. In view of the aforesaid circumstances, I am of the considered view that the prosecution failed to prove the case beyond any reasonable doubt and under the aforesaid circumstances, the appellants are entitled for acquittal. The court below without considering the evidence in proper perspective convicted them, hence, the judgement is liable to set aside.

14. Hence, this appeal is allowed. The conviction and sentence imposed on the appellants are set aside and all the appellants are acquitted. Fine amount, if any paid by the appellants, shall be refunded to them. The bail bond executed by the appellant should stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The District Munsif Cum Judicial Magistrate,
Paramathi.
- 3.Do Through the Chief Judicial Magistrate,
Namakkal.
- 4.The Deputy Superintendent of Police,
Velur Sub Division,
Velur, Namakkal District.

5.The Public Prosecutor,
High Court, Madras.

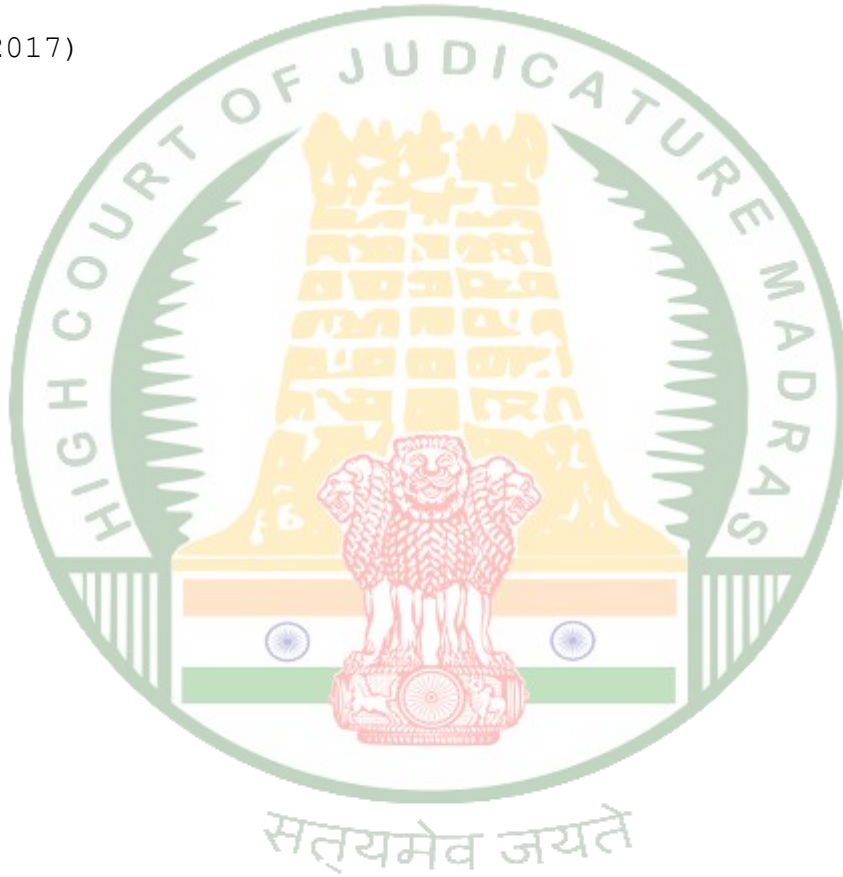
Copy To

The Section Officer,
Criminal Section,
High Court, Madras 104.

+1cc to Mr.V.P.Sengottuvel, Advocate, S.R.No.4488

Cr1.A.No.416 of 2009

RJ(CO)
CA(21/11/2017)



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