

BAIL SLIP

The Appellant/Accused-2 namely K.Murugan S/o.Kalimuthu, was directed to be released on bail as per the order of this court dated 21.08.2009 in CrI.MP.No.1/2009 in CrI.A.No.440/2009 on the file of this Court.

The Appellant/Accused-1 namely Senthil @ Senthil kumar, S/o.Subramanian, was directed to be released on bail as per the order of this court dated 17.08.2009 in CrI.MP.No.1/2009 in CrI.A.No.449/2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.Nos.440 and 449 of 2009

K.Murugan ... Appellant/A-2
(CrI.A.No.440 of 2009)

Senthil @ Senthil Kumar ... Appellant/A-2
(CrI.A.No.449 of 2009)

State rep by the Inspector of Police
North Police Station,
Tiruppur District
Cr.No.491 of 2008) ...Respondent in
CrI.A.No.440/2009

vs.

The Deputy Superintendent of Police,
Tiruppur Sub-Division,
Coimbatore District.
(Crime No.491 of 2008) ... Respondent in
CrI.A.449/2009

Criminal appeals preferred under Section 374(2) Cr.P.C.,
against the judgement dated 01.07.2009 passed by the learned
Principal Sessions Cum Special Court Judge, Coimbatore, in
Spl.S.C.No.28 of 2008.

For Appellants : Mr.K.Thilageswaran
(in Crl.A.No.440 of 2009)
Mrs.Jayashree Basker
Legal Aid Counsel.
(in Crl.A.No.449 of 2009)

For Respondent : Mr.V.Arul
Additional Public Prosecutor
(in both appeals)

COMMON JUDGMENT

The accused 1 and 2, in Spl. Sessions Case No.28 of 2008, on the file of the learned Special Judge/Principal Sessions Judge, Coimbatore, are the appellants herein. The first accused stood charged for the offences under Sections 294-B, 506(ii) (two counts) of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989. The Second accused stood charged for the offences under Sections 294-B and 506(ii) (two counts) of IPC. The trial Court, after trial, by Judgment dated 01.07.2009, convicted the first accused under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989 and sentenced him to undergo rigorous imprisonment for six months and imposed a fine of Rs.1000/-, in default to undergo rigorous imprisonment for two months and convicted him under Section 294(b) IPC, sentenced him to undergo rigorous imprisonment for three months and imposed a fine of Rs.500/- in default to undergo rigorous imprisonment for two weeks and convicted him under Section 506 (ii) for one count of IPC, and sentenced him to undergo rigorous imprisonment for one year and imposed a fine of Rs.1000/- in default to undergo rigorous imprisonment for two months and acquitted him from the offence under Section 506(ii) of IPC, in another count. The second accused was convicted under Section 294(b) IPC and sentenced him to undergo rigorous imprisonment for three months and imposed a fine of Rs.500/- in default to undergo rigorous imprisonment for two weeks, and convicted under Section 506(ii) of IPC, and sentenced to undergo rigorous imprisonment for one year and imposed a fine of Rs.1000/- in default to undergo rigorous imprisonment for two months and acquitted him from the offence under Sections 506(ii) of IPC. Challenging the above said conviction and sentence, the first accused filed Crl.A.No.449 of 2009 and the second accused filed Crl.A.No.440 of 2009.

2. The case of the prosecution, in brief, is as follows:-

(i) P.W.1 in this case was working as Scavenger in Tiruppur Municipality Corporation and he belongs to schedule caste Arunthathiyar Community. The first accused in this case belongs

to a Backward Class Gounder Community, and the second accused belongs to Arunthathier Community, who is also a relative of P.W.1. On 15.04.2008, while P.W.1 went to attend his duty at Tiruppur Municipality Corporation, both the accused came to the house of P.W.1 and shouted at P.W.2/wife of P.W.1, and abused her with filthy language by calling her caste name and also criminally intimidated her that they will finish P.W.1. Thereafter, on the next day, P.W.1 went to the police station and filed a complaint. P.W.8, the Head Constable, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.491 of 2008 for the offence under Sections 294-B, 506(ii) (two counts) of IPC and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989 and prepared first information report [Ex.P5] and sent the same to the learned Judicial Magistrate No.I, Tiruppur and copies of the same to the higher officials. P.W.12, the Deputy Superintendent of Police, working at Tiruppur Sub-Division, Coimbatore District, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar[Ex.P2] and rough sketch [Ex.P7]. He examined the witnesses and recorded their statements. Then, he obtained a community certificate for both the accused as well as P.W.1 and he arrested both the accused and sent them to judicial custody and after completion of investigation, he filed a final report.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 12 witnesses were examined and 7 documents were marked.

4. Out of the said witnesses examined, P.W.1 is the defacto complainant. According to him, he was working as Scavenger in Tiruppur Municipality Corporation and on the date of occurrence, when he was attending his duty, at that time, both the accused came to his house and shouted his wife. P.W.1 after came back to his house, P.W.2 informed the same, and on the same day, he questioned the second accused and he denied the same and told that only the first accused abused her. Then, on the same day night, one Krishnan, uncle of the second accused came to his house and compromised and then he forget about the occurrence. On the next day morning, while he was attending his duty, both the accused met him and told him not to worry about it. P.W.2 is the wife of P.W.1. According to her, on the date of occurrence, when she was alone in house, both the accused came in intoxicated mood and open the gate, the first accused scolded and abused her with filthy language by calling her caste name and then both the accused gone away. Then, she informed the same to P.W.1 and he gave complaint before the police station. P.W.3 is the brother of P.W.2. According to him, at the time of occurrence, when he was present in P.W.2's house, and both the

accused came to P.W.2's house, open the gate, the first accused scolded P.W.2 by calling her caste name. P.W.4 is the neighbour of P.Ws.1 and 2. According to him, both the accused abused P.W.2 with filthy language and also insulting her by calling her caste name and they have criminally intimidated her. P.W.5 is also the neighbour of P.Ws.1 and 2. According to him, after hearing the noise from the scene of occurrence, he came to the scene of occurrence, at that time, the first accused criminally intimidated to P.W.2 and the second accused abused her by calling her caste name. P.W.6 is the witness to the observation mahzar and rough sketch. P.W.7 was working as Tahsildar at Tiruppur. According to her, she has given community certificate to P.W.1 as he belongs to schedule caste Arunthathiyar Community. P.W.8 was the Head Constable working in the respondent police station. According to him, on receipt of the complaint from P.W.1, he registered a case in Crime No.491 of 2008 for the offence under Sections 294-B, 506(ii) (two counts) of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989 and prepared first information report and sent the same to the learned Judicial Magistrate No.I, Tiruppur and copies of the same to his higher officials. P.W.9 was working as Tahsildar at Tiruppur. According to him, he has given community certificate to the first accused. P.W.10, the Sub Inspector of Police, working in the respondent police station. According to her, on 15.03.2008, one Thulasi came to the police station and given complaint against one Mariappan. P.W.11, the Health Inspector working in the Tiruppur Municipality Corporation. He deposed that on the date of occurrence on 14.04.2008, P.W.1 was attending duty from 6.00 a.m. to 11.00 a.m. and 2.00 p.m. to 5.00 p.m. P.W.12, the Deputy Superintendent of Police working in Tiruppur Sub Division,. According to him, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements, arrested the accused and sent them to judicial custody, obtained community certificate for both the accused and P.W.1 and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witnesses nor marked any documents.

6. Having considered all the above, the Trial Court convicted both the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court with these appeals.

7. Earlier, the learned counsel appearing for the first accused/appellant withdrew his appearance. Hence, this Court appointed Mrs. Jayasahri Basker, as Legal Aid Counsel, appearing for the first accused/appellant.

8. The learned counsel appearing for the first accused/appellant would submit that from the evidence of P.W.1, absolutely there is no material available to show that the first accused abused P.Ws.1 and 2 by calling their caste name. P.W.1 did not depose that there is no such allegation by calling by their caste name. Even according to him, on the date of occurrence, there was a compromise and he decided to drop the proceedings, on the next day, i.e. 12.04.2008, both the accused met P.W.1 and there was no quarrel between them. P.W.2 admitted in her cross examination that only on the next day, a community association of the community people compelled them to give complaint before the respondent police and they also accompanied by them to give complaint. Even as per the evidence of P.Ws.1 to 4, there are lot of contradictions regarding the actual ward used by the first accused. All the witnesses are interested witnesses and they are closely related to P.W.1, and except the evidence of P.W.1, there is no independent witness to show that the appellants abused P.W.2. The learned counsel appearing for the first accused/appellant further submitted that there was a delay of 30 hours in filing the complaint and there was no explanation on the side of the prosecution for the delay in filing the complaint. Hence, she prays for allowing this appeal.

9. The learned counsel appearing for the second accused/appellant would submit that from the evidence of P.Ws.1 to 5, absolutely there is no materials to show that the second accused has abused P.W.2 and also criminally intimidated her. All the witnesses only says that the second accused along with the first accused came to the house of P.W.2 and absolutely there is no evidence to show that the second accused abused P.W.2 with filthy language and criminally intimidated her. The trial Court, without considering the materials in proper perspective has erroneously convicted the second accused and he prays for allowing this appeal.

10. The learned Additional Public Prosecutor appearing for the respondent would contend that the evidence of P.Ws.2 to 5 clearly established that both the accused came to the house of P.W.2 and abused her by calling her caste name and also criminally intimidated her. P.W.3, who is the brother of P.W.2 also present in the scene of occurrence. P.Ws.4 and 5 are neighbours of P.Ws.1 and 2 and they also witness to the occurrence. All of them consistently stated that both the accused came to the house of P.W.2 and abused her with filthy language and insulted her by calling her caste name and also

criminally intimidated that they will finish P.W.1. In the above circumstances, the presence of P.W.3 to P.W.5 in the scene of occurrence is nature and there is no reason to disbelieve their evidence, the trial Court rightly convicted the accused/appellants and there is no reason to interfere with the well considered judgment of the trial Court.

11. I have considered the rival submissions and perused the materials available on record.

12. P.W.2 is the wife of P.W.1. According to her, on the date of occurrence, P.W.2, her son and sister were present in the house. At that time, both the accused came there in an intoxicated mood and they pushed the gate, the first accused abused her with filthy language and insulted her by calling her caste name and also criminally intimidated her that if anybody come to her rescue, he will finish them and they quarrelled with her and then they went away. But, P.W.1, the husband of P.W.2 in his evidence says that only after he returned back from his duty, P.W.2 told him that both the accused came to his house and shouted at her and on the very same day at about 7.00 p.m., P.W.1 met the second accused and the second accused denied the same and told that the first accused alone quarrelled with P.W.2. On the same day at about 9.00 p.m., the uncle of the second accused came to the house of P.W.1 and compromise the issue and then he decided to drop further action. On the next day, when P.W.1 was going to attend his duty, both the accused met and told him that not to worry about anything. Thereafter, on the next day he has given complaint. P.W.3, who is the brother of P.W.2 was also present in the house at the time occurrence. He has only stated that the first accused alone abused P.W.2 and calling her caste name. P.W.4, the neighbour of P.Ws.1 and 2 stated that both the accused abused her with filthy language and they also criminal intimidated her and told that they will finish P.W.1. P.W.5, another neighbour says that the first accused alone criminally intimidated to P.W.2. From the evidence of P.Ws.2 to 5, there are lot of contradictions. While considering the evidence of P.W.2, it is not clear about the actual word used by the first accused. P.W.1 also admitted that there is no motive against P.W.1. Even P.W.2 in her evidence stated that on the date of occurrence there was a compromise and he has decided not to take any further action against the accused. P.W.2, in her cross examination stated that on the next day morning, his community association people has instigated him to file a complaint, and they have took them to the police station and files a complaint against the accused. Even though, the occurrence has taken place at about 3.00 p.m. on 09.04.2008, the complaint was given on the next day, i.e., 10.04.2008 at about 11.30 p.m., and there is a long delay of more than 30 hours in filing the complaint. But, the delay in filing the complaint has not properly explained by the

prosecution. In the above circumstances, in the absence of any clear evidence that whether the accused have abused P.Ws.1 and 2, they cannot be convicted under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989.

13. So far as the offence under Sections 294(b) and 506(ii) IPC is concerned, in view of the contradictory evidence of eye witnesses, it is highly unsafe to convict the accused for the above said offences. Especially, in their evidence P.W.1 and P.W.2 did not say anything about the actual word used by the accused, the Court below without considering the evidence in proper perspective and erroneously convicted the appellants. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charges beyond any reasonable doubt. Hence, the accused are entitled for acquittal and the judgment of the trial Court is liable to be set aside.

14. In the result, these Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/accused in Spl.S.C.No.28 of 2008 dated 01.07.2009 on the file of the learned Special Judge/Principal Sessions Judge, Coimbatore is set aside and the appellants/accused are acquitted from the charge levelled against them, and bail bond, if any, executed by them shall stand cancelled and the fine amount paid by them are ordered to be refunded forthwith.

15. While parting with the case, this Court appreciates the services rendered by Mrs.Jayashree Basker, Advocate, who appeared on behalf of the appellant/accused in CrI.A.No.449 of 2009 as Legal Aid Counsel. The Tamil Nadu State Legal Aid Services Authority is directed to pay her remuneration as per rule.

सत्यमेव जयते
Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge,
Principal District and Sessions Court,
Coimbatore.

2.The Deputy Superintendent of Police,
Tiruppur Sub Division,
Coimbatore District.

3.The Public Prosecutor,
High Court, Madras.

4.The Inspector of Police
North Police Station
Tiruppur District

5.The Judicial Magistrate NO.I
Tiruppur

6.The Chief Judicial Magistrate
Coimbatore

7.The Member Secretary
The Tamil Nadu State Legal aid Services Authority
Chennai-104

+1 cc to M/s.K.Thilageswaran Advocate sr 73087

+1 cc to M/s.Jayasri Baskar Advocate sr 72982

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