

BAIL SLIP

The Accused/Appellant namely V.Marisamy age 56 years was directed to be released on Bail vide order dated 31/08/2009 in MP.No.1/09 in Cr1.A.No.517/09

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Cr1.A.No.517 of 2009

V.Marisamy ...Appellant/Accused

vs.

State, rep. by  
The Inspector of Police,  
M-1, Periyanaickenpalayam Police Station,  
Periyanaickenpalayam, Coimbatore.  
(Crime No.108 of 2008) ... Respondent/complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 04.08.2009 passed by the learned Principal District and Sessions Judge, Coimbatore, in Spl.S.C.No.48 of 2008.

For Appellant : Mr.SG.Ponnambaalathiyagarajan

For Respondent : Mrs.M.F.Shabana  
Government Advocate(Cr1. Side)

JUDGMENT

The sole accused, in Spl. Sessions Case No.48 of 2008, on the file of the learned Principal District and Sessions Judge, Coimbatore, is the appellant herein. He stood charged for the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989, and Sections 294(b) and 506(ii) of IPC. The trial Court, after trial, by Judgment dated 04.08.2009, convicted the appellant/accused for all the charges and sentenced him to undergo six months rigorous imprisonment and imposed a fine of Rs.1000/- in default, to undergo one month rigorous imprisonment for the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities)Act,1989, and sentenced him to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three weeks for the offence under

Section 294(b) IPC and sentenced him to undergo six months rigorous imprisonment and imposed a fine of Rs.1000/- in default to undergo one month rigorous imprisonment for the offence under Section 506(ii) IPC. Challenging the above said conviction and sentence, the appellant/accused, is before this Court with this Criminal Appeal.

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

(i) P.W.1, belongs to a Schedule Caste, "Sukkiliar" community and resident of one Periyamathampalayam Village. He is an agricultural coolie. The appellant/accused belongs to a Backward Class, 'Gounder community'. On 06.03.2008 at about 3.00 p.m., the appellant/accused cut down a neem tree standing in front of one Muniappan Temple. When P.W.1 was questioned the accused, the accused scolded him with filthy language and also abused him by calling his community name, and also threatened him with dire consequences. At that time, P.Ws.5 to 7 and some other persons were also present. Then all the people belongs to his community has a deliberation, thereafter, on the next day on 07.03.2008, P.W.1 went to the police station and lodged a complaint.

(ii) P.W.8, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.108 of 2008, for the offence under Sections 294(b) and 506(ii) IPC, and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act,1989. He prepared a first information report[Ex.P5] and sent the same to the Judicial Magistrate Court and copies of the same to the Deputy Superintendent of Police, Periyanaickenpalayam, for further investigation.

(iii) P.W.9, the Deputy Superintendent of Police, Periyanaickenpalayam, on receipt of the first information report, commenced investigation, proceeded to the scene of occurrence, prepared an observation mahazar[Ex.P4], a rough sketch[Ex.P6] in the presence of witnesses. He examined the witnesses and recorded their statements. Thereafter, P.W.9 obtained a community certificate of P.W.1 as well as the accused. He examined the Tahsildar and other witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

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 9 witnesses were examined and 6 documents were exhibited.

4. Out of the said witnesses examined, P.W.1 is the complainant in this case. P.W.2 is the Tahsildar. He has given community certificate for the appellant/accused. P.W.3 is another Tahsildar, Coimbatore North. He has given community certificate for P.W.1 and he stated that P.W.1 belongs to Schedule Caste, 'Sakkiliar' community. P.W.4 is the Village

Administrative Officer. He spoke about the cutting of neem tree. P.W.5 is an eye witness to the occurrence. He also belongs to Schedule Caste Sakkiliar community. According to him, on the date of occurrence, the appellant/accused cut down the neem tree standing near a Muniappan Temple, when his community people questioned him, he scolded them with filthy language and calling them by community name. P.W.6 is also an eye witness to the occurrence. According to him, on the date of occurrence at about 2.00 p.m., he saw the accused cut down the neem tree. P.W.7 is the witness to the observation mahazar. P.W.8 is the Sub Inspector of Police working in the respondent police station. He stated that on receipt of the complaint from P.W.1, registered a case and sent the first information report to the Judicial Magistrate Court and copies of the same to the Deputy Superintendent of Police. P.W.9 is the Deputy Superintendent of Police, Periyanaickenpalayam. He deposed that on receipt of the first information report, commenced investigation, prepared an observation mahazar and rough sketch, obtained community certificate from Tahsildar, examined the Tahsildars and other witnesses and recorded their statements 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., he denied the same as false. His defence was a total denial. The accused examined three witnesses and exhibited 2 documents and no material object was marked. D.W.1 is a person who belongs to Schedule Caste Sakkiliar community. According to him, no neem tree was standing in front of the Muniappan Temple. Since the place available in the Muniappan Temple is not sufficient to the Schedule Caste Sakkiliar Community people, and they had planned to request the accused who is having land adjacent to the temple to donate some land. In the above circumstances, on 06.03.2008 at about 8.30 p.m., they called him for community meeting and in the said meeting, they have decided to request for some additional land from the accused. But, the accused refused, hence the community people gave complaint against the accused. D.W.2 also belongs to Schedule Caste Sakkiliar Community. According to him, the Schedule Caste Community people wants to construct some additional building for temple and requested the accused to provide some land, he refused, being agitated over the same, the community people gave a complaint against him. D.W.3 is a mason, according to him, there was no trees standing near the Muniappan Temple.

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

7. I have heard Mr.Ponnambaalathiyagarajan , the learned

counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant would submit that the prosecution did not come out with the true facts in this case. As per the complaint filed by P.W.1, to the respondent police, the accused and his son, were cut down the tree, at that time, the complainant along with six persons belongs to the Schedule Caste Community questioned him, and he scolded and abused him. But, before the Court, all the eye witnesses, namely, P.Ws.1,5 and 6 stated that the accused cut and remove the neem tree, at that time only four people were present. But, in their cross examination, they stated that only after hearing P.W.1's alarm two other persons came there but they were not examined by the prosecution. In the said circumstances, the presence of other witnesses in the scene of occurrence is highly doubtful. Apart from the evidence of P.W.1 there is no evidence to show that the appellant abused P.W.1 within the public view. Apart from that there was a delay of 24 hours in filing the complaint and there is no explanation for the delay. The learned counsel appearing for the appellant/accused further submitted that any offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, shall be investigated by a Police Officer not below the rank of Deputy Superintendent of Police, the investigation officer shall be appointed by the State Government/Director General of Police/Superintendent of Police, after taking into account his past experience, and the prosecution did not produce any order appointing the investigation officer in this case, and on the ground also the appellant is entitled for acquittal.

9. Per contra, the learned Government Advocate(Crl. Side) appearing for the State would submit that P.Ws.1, 5 and 6 are eye witness to the occurrence. At the time of occurrence, all of them were presence in the scene of occurrence. When the appellant cutting the neem tree, P.W.1 questioned him and the appellant scolded P.W.1 with filthy language and also abused him calling his caste name. Since the occurrence took place near the temple, where the complainant's community people are present and their presence is natural. Further, the delay is also properly explained by the prosecution and as per the order passed by the S.P. of Police, the Deputy Superintendent of Police conducted the investigation and hence she sought of dismissal of this appeal.

10. I have considered the rival submissions.

11. The occurrence took place on 06.03.2008, at about 8.30 p.m. According to P.W.1, the accused was cutting down a neem tree standing in front of a temple, which was planted by his community people. At that time, P.Ws.5, 6 and 7 were present, when they questioned him, he scolded them with filthy language, abused them by calling their caste name, and also intimidated them with dangerous weapon. Thereafter, there was a deliberation between his community people and then they filed the complaint. In his cross examination, P.W.1 stated that while the accused cutting the tree, he was alone present, and he raised alarm, thereafter one Ramasamy and one Nanjundappan, came to the scene of occurrence. In the complaint filed by P.W.1, it has been stated that two persons, namely, the accused and his son were cutting the neem tree. At the time nearly six persons are present and they questioned the accused. But, during trial he has deposed that the accused alone cutting the tree, and in his cross examination he has admitted that at the time of cutting the tree, he was alone present. Thereafter, two persons came there, but those two persons were not examined by the prosecution.

12. It is clearly admitted by the witnesses that before filing the complaint, there was a deliberation, and only thereafter, they gave a complaint to the respondent police. The complaint was filed after the delay of 24 hours i.e., 07.03.2008 at about 1.00 p.m. and the delay was not properly explained by the prosecution. Apart from that the defence witnesses examined as D.Ws.1 and 2, also belongs to the same community. In their evidence, they deposed that their community people requested the accused to provide some land for Muniappan Temple. But, he refused. Subsequently, they conducted community meeting and in the said meeting, they decided to give complaint against the appellant. P.W.5, the another eye witness also admitted that there was a meeting conducted by the community people and on the next day, there was a deliberation and then they have given a complaint.

13. So far as the offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, is concerned, to bring home the offence under Section 3(i)(x) of the Act, the prosecution should prove that the affected person should be a member of a Schedule Caste or a Schedule Tribe, the offender should not be a member of a Schedule Caste or a Schedule Tribe and there must be an intentional insult or intimidation with intent to humiliate a member of a Schedule Caste or a Schedule Tribe, such insult or intimidation should have been made in any place within the public view.

14. From the evidence of P.W.1, it is seen that at the time of occurrence, he was alone present and after raising alarm, two persons belongs to his community came there. But, the above said two persons were not examined by the prosecution. It is also admitted that there was a celebration by the community people before filing complaint and there was delay of 24 hours in filing complaint, which was also not explained by the prosecution. All the above circumstance created a doubt about the prosecution case.

15. The next contention of the learned counsel appearing for the appellant was that, under Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) rules, there must be specific order appointing a police officer not below the rank of Deputy Commissioner of Police to conduct the investigation, after taking into account of his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time, and Rule also empowers the State Government to direct the Superintendent of Police, to appoint the investigation officer to investigate the case. Even though, P.W.9, a Deputy Commissioner of Police, has investigated the crime, but the prosecution did not produce any order appointing the P.W.9 to investigate the case. Hence, there is violation of mandatory provision. In the above circumstances, I am of the considered view that the prosecution has failed to prove the charges beyond any reasonable doubt. In the above circumstances, the appellant is entitled for acquittal.

16. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.48 of 2008 dated 04.08.2009 on the file of the learned Principal District and Sessions Judge, Coimbatore is set aside and the appellant /accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,  
Coimbatore.

2.The Inspector of Police,  
M-1, Periyanaickenpalayam Police Station,  
Periyanaickenpalayam,  
Coimbatore.

3.The Public Prosecutor,  
High Court, Madras.

4.The Chief Judicial Magistrate  
Coimbatore

5.The Judicial Magistrate No.VI  
Coimbatore

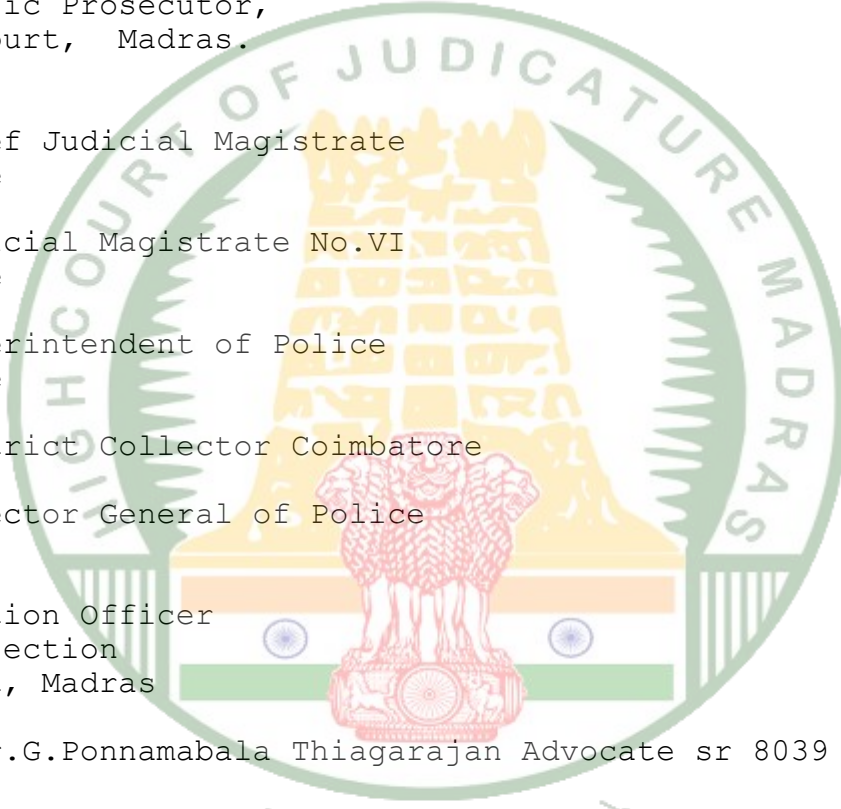
6.The Superintendent of Police  
Coimbatore

7.The District Collector Coimbatore

8.The Director General of Police  
Mylapore

9.The Section Officer  
Criminal Section  
High Court, Madras

+1cc to Mr.G.Ponnamabala Thiagarajan Advocate sr 8039



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