

Bail Slip

The Appellant/Accused 1 to 3 Viz.,
1.Kandasamy Goundar, aged 79 years, S/O Mari Gounder,
2.Rajendran, aged 40 years, S/O.Kandasamy Gounder 3.Nagaraj,
aged 37 years, S/O Kandasamy Gounder, were directed to be
released on bail as per order of this Court dated 18.09.09 in
M.P.No.1/09 in CrI.A.No.555/09.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.555 of 2009

1. Kandasamy Goundar
2. Rajendran
3. Nagaraj

... Appellants/A1 to A3

Vs

State rep. By
Deputy Superintendent of Police,
Dharmapuri Sub-Division,
Dharmapuri,
(Cr. No.197/2007,
Thoppur Police Station) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C.,
to set aside the conviction and sentence imposed by the learned
Principal Sessions Judge, Dharmapuri, by judgment dated
30.07.2009 in S.C.No.31 of 2008.

For Appellants : Mr.R. Thirughanam

For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (CrI. Side)

JUDGEMENT

A1 to A3 in S.C.No.31 of 2008 on the file of the
Principal Sessions Court, Dharmapuri are the appellants herein.
They stood charged for the offences under Sections 3(1)(iv) and
3(1)(v) of Scheduled Caste and Scheduled Tribes (Prevention of

Atrocities) Act, 1989. By judgment, dated 30.07.2009, the trial court convicted all the accused under Section 3(1)(iv) of Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 and sentenced them to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for 3 months and also convicted them under Section 3(1)(v) of Scheduled Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for 3 months. The trial court ordered both the sentences to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

P.Ws.1 and 2 are husband and wife. P.W.1 was working as a marine engineer. On 20.10.2004, he purchased an extent of 87 cents of land in Survey No.355/2/B1, in Ammanthopur Village in Dharmapuri District in the name of P.W.2. While, P.W.1 was in Bombay, all the accused forcibly dispossessed them and occupied their land. There after, he came back from Bombay, he, along with his relatives, approached the accused and asked them to give possession to them, but they refused, threatened them and driven them away. Hence, P.W.1 lodged a complaint before the respondent police.

3. P.W.7, Sub-Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.197 of 2007 for the offence under Section 3(1)(v) of the SC/ST Act and prepared First Information Report (Ex.P.12) and sent the same to the jurisdictional Magistrate and also to the Deputy Superintendent of Police for further investigation.

4. P.W.8, Deputy Superintendent of Police, Dharmapuri District, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.13) and Rough Sketch (Ex.P.14) in the presence of the witnesses. Then, he recorded the statements of the witnesses and obtained Chitta, Adangal with regard to the disputed land from the Tahsildar and also community certificate for P.Ws.1 and 2 and the accused and he recorded the statement of the Assistant Engineer of the Electricity Board and after completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 8 witnesses were examined and 14 documents were exhibited, besides 2 material objects.

6. Out of the witness examined, P.W.1 is the husband of P.W.2. According to him, he purchased the property on 20.10.2004 from his nephew one Devaraj in the name of P.W.2, thereafter, he went to Bombay for his official work. At that time, all the appellants had forcibly grabbed the property and dispossess them. Hence, after 7 months, he came back to his native place and on 03.05.2007, he approached the accused and asked them to hand over the possession of the land to them, but they refused and threatened them. Hence, he lodged a complaint.

7. P.W.2 is the wife of P.W.1. She has also spoken about the purchase of land on 20.04.2004 from his nephew Devaraj and she came to know that the accused were cultivating the land. When P.W.2 and her relatives questioned the accused, they threatened them and she informed the same to P.W.1 and she has also given a complaint to the District Collector. After her husband returned back to his native place, they have lodged a complaint on 03.05.2007. P.W.3, Tahsildar, Dharmapuri, has given a community certificate to P.W.1 stating that he belongs to schedule caste Valluvar community. P.W.4 is the Additional Sub-Tahsildar, Dharmapuri. He has given a community certificate for A1 and A3 stating that they belongs to most backward class Vanniyar community.

8. P.W.5, Assistant Engineer, working in the Electricity Board, has given service connection to the disputed land in Survey No.352/2/B-1 in the name of A2, and the service connection was given on 10.07.1998. P.W.6 is the Sub-Registrar, Maecherry. According to him, the land in dispute was purchased by P.W.2 from one Devaraj and the sale deed was registered in the Sub-Registrar, Maecherry on 20.10.2004. P.W.7 is the Sub-Inspector of Police, has spoken about the registration of the case. P.W.8, Deputy Superintendent of Police, has spoken about the investigation done and filing of final report.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. A3, namely, Nagarajan, examined himself as D.W.1 and Ex.D.1 to Ex.D.10 have been marked on their side.

10. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

11. We have heard Mr.R.Thirugananam, learned counsel appearing for the appellants and Mrs.M.F.Shabona, learned Gov.Adv. (Crl.Side) appearing for the State and also perused the records carefully.

12. Mr.R.Thirugananam, learned counsel appearing for the appellants would contend that the appellants are in possession and enjoyment of the property long prior to the purchase of P.Ws.1 and 2. Even the service connection stands in the name of A2 from the year 1998, P.W.5 Assistant Executive Engineer, Tamilnadu Electricity Board, had also given evidence that service connection was effected on 10.07.1998 and he has also issued a certificate, Ex.P.10. Apart from that after purchase of the property, P.Ws.1 and 2 were trying to interfere with their possession. Hence, appellants are constrained to file a suit in O.S.No.166 of 2005 on the file of the District Munsif Court, Dharmapuri for declaration declaring that the first appellant/A1 is the owner of the property and also for permanent injunction restraining P.Ws.1 and 2 and some other defendants from interfering with the peaceful possession and enjoyment of the property and a copy of the plaint in O.S.No.166 of 2005 has been marked as Ex.D.1., and the suit is pending. Pending suit, P.Ws.1 and 2 have also filed another suit in O.S.No.134 of 2008 on the file of the District Munsif Court, Dharmapuri, against the appellants/accused for declaration of the title of the property and also for recovery of possession from the accused and the copy of the plaint in O.S.No.134 of 2008 has been marked as Ex.D.2. When, the suit filed by the first appellant/first accused was pending, P.Ws.1 and 2 had made a false complaint as if the appellants have forcibly tried dispossess them in the year 2005. Even in the suit filed by the appellants, an Advocate Commissioner was appointed and he has also filed a report stating that they were in possession. Hence, it is purely a civil dispute between the parties and the P.Ws.1 and 2 have given a criminal flavour to the same and given the complaint. The court-below without considering the evidences with proper perspective, convicted the accused.

13. Per contra, learned Government Advocate(Crl.side) appearing for the respondent submitted that P.Ws.1 and 2 had

purchased the property in the year 2004 and the Adangal extract, Chitta and A register, are all stands in the name of P.Ws.1 and 2 and the appellants, who belong to a most backward community, knowing fully well that P.Ws.1 and 2 belongs to SC/ST community forcibly dispossessed them and grabbed the property and the prosecution also from the materials proved that they have forcibly dispossessed P.Ws.1 and 2. Hence, there is no reason to interfere with the same.

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

15. It is an admitted fact that P.Ws.1 and 2 belong to scheduled caste, Valluvar community and the appellants/accused belongs to most backward class Vanniyar community. P.Ws.1 and 2 said to have purchased the disputed property on 20.10.2004 from one Devaraj. Copy of the sale deed was marked as Ex.P.11 and the Sub-Registrar was also examined as P.W.6. Hence, the prosecution has proved that P.Ws.1 and 2 have purchased the property on 20.10.2004. Now, the question is whether the appellants/accused have wrongfully occupied and cultivating the land owned by P.W.1 and that they have wrongfully dispossessed P.Ws.1 and 2 and occupied the land belonging to them. and the appellants/accused had any criminal intention to dispossess and occupy the land of P.Ws.1 and 2.

16. The case of the appellants/accused is that they were in possession of the property long prior to the purchase of P.Ws.1 and 2. To establish the same, they have relied upon the evidence of P.W.5, the Assistant Engineer, working in the Tamilnadu Electricity Board. P.W.5 has stated that there is a well in the disputed land and electricity service connection was also given in S.C.No.658 in favour of A2 and the service connection was effected w.e.f. 10.07.1998, and to that effect, he has also issued a certificate Ex.P.10. Apart from that after purchase of the property by P.Ws.1 and 2, the first appellant/first accused, father of A2 and A3, filed a suit in O.S.No.166 of 2005 on the file of the District Munsif Court, Dharmapuri, for declaration declaring that they are the owners of the property and also for permanent injunction restraining P.Ws.1 and 2 and other defendants from interfering with the property. Hence, on the date of filing of the complaint by P.Ws.1 and 2, namely, on 03.05.2007, the suit was admittedly pending on the file of the District Munsif Court, Dharmapuri. Subsequently, P.Ws.1 and 2 have also filed a suit against all the accused in O.S.No.134 of 2008 on the file of the District Munsif Court, Dharmapuri for declaration and for recovery of possession of the property from the appellants/accused. Hence from the above fact, it is clear that civil dispute is pending regarding the title of the property, between the parties, on the

date of filing the complaint. Apart from that even though P.Ws.1 and 2 have purchased the property as early as on 20.10.2004 and they have made a complaint before the respondent police only on 03.05.2007 and they have also avered in the plaint filed by them in the year 2005 that in May 2005 the accused has forcibly occupied the land. But, the complaint was given nearly after two years, namely 03.04.2007 and there is no explanation for the delay in lodging the complaint.

17. It is not the case of the prosecution that after purchase, they were put in possession and thereafter the accused forcibly dispossessed them, when they were cultivating the land. From the evidence of P.W.1, it is seen that after the purchase of the disputed land, he went to Bombay and his wife P.W.2 informed him that the accused have encroached their land. P.W.2 has stated that after purchase, he came to know that the accused were cultivating the land and when they questioned the appellants, they appellants have threatened him. P.W.1 did not show that the accused had wrongfully dispossess them and wrongfully grabbed the land. Hence, absolutely, there is no evidence to show that P.Ws.1 and 2 have been wrongfully dispossessed from the property, and admittedly on the date of filing of the complaint by P.Ws.1 and 2, civil suits are pending, regarding the title over the property.

18. In the above circumstances, the prosecution failed to prove that the accused had wrongfully dispossessed P.Ws.1 and 2 and also wrongfully grabbed the land and cultivated the same. Hence, the appellants are entitled for acquittal.

19. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants in S.C.No.31 of 2008 are set aside and the appellants/A2 and A3 are acquitted of all the charges. Bail Bond, if any, executed by them shall stand cancelled. Fine amount, if any, paid by them shall be refunded to them. The appeal against A1 is dismissed as abated.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp
To

1.The Judicial Magistrate No.II,
Dharmapuri.

2.-Do- Thro The Chief Judicial Magistrate,
Dharmapuri @ Krishnagiri.

3.The Principal Sessions Judge,
Dharmapuri.

4.The Public Prosecutor,
High Court, Madras.

5.The Deputy Superintendent of Police,
Dharmapuri Sub Division, Dharmapuri District.

6.The Inspector of Police,
Thoppur Police Station,
Dharmapuri Taluk.

+lcc to Mr.Ch.Pandian, Advocate Sr.11383

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srg 12/06/2017



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