

Bail Slip

That the Appellants/Accused Nos 1 & 2 Kumar & Selvi were directed to be released on bail as per order of this Court dated 28.10.2010 in MP.2/10 in CrI.A.No.595/2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.A.No.595 of 2010

1.Kumar
S/o.Manickam

2.Selvi
W/o.Kumar

... Appellants

vs

The State represented by
The Deputy Superintendent of Police,
Chinna Salem Police Station,
Chinna Salem.
Villupuram District.

... Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against judgment of learned Principal Sessions and Special Judge, Villupuram, passed in S.C.No.276 of 2009 on 02.09.2010.

For Appellants : Mr.M.P.Saravanan

For Respondent : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

This appeal arises against judgment of learned Principal Sessions and Special Judge, Villupuram, passed in S.C.No.276 of 2009 on 02.09.2010.

2. Prosecution case is that PWs.1,4,5,6 and one Sathya and Abirami engaged by accused for agricultural work. On 26.12.2007, since Sathya and Abirami were not well, PWs.1, 4, 5 and 6 sent them to their native place. The accusation is that the accused questioned PWs.1, 4 and 5 why they had sent Sathya and Abirami to their native place without their knowledge, assaulted them and abused them using their caste name. PW-1 preferred Ex.P1, complaint, to PW-9, Inspector of Police, Chinna Salem Police Station, who registered a case in Crime No.697 of 2007 on the file of respondent for offences u/s.342, 355 and 323 IPC and 3 (i)(x) of the SC/ST Act. The First Information Report is Ex.P12. PW-9 forwarded Ex.P12, First Information Report, to Court. PW-9 forwarded the four injured persons to hospital under a memo. PW-10, Deputy Superintendent of Police, took up investigation in the case on 28.12.2007, visited the scene of occurrence and prepared Ex.P7, Observation Mahazar and Ex.P13 - Rough Sketch, in the presence of PW-7 and another. PW-10 examined PWs.1, 4 to 7 and another and recorded their statements. PW-10 submitted letters to Tahsildar to ascertain the caste to which the victims belong. On 28.12.2007, PW-10 arrested first accused and forwarded him to judicial custody. PW-10 examined PW-8, Doctor, recorded his statement and obtained Exs.P8 to P11, Accident Registers. PW-10 examined PW-2, Tahsildhar, recorded his statement and obtained reports. PW-10 examined PW-3, Tahsildhar, recorded his statement and obtained community certificates of victims. PW-10 examined PW-9, Inspector of Police and recorded his statement. On completion of investigation, PW-10 filed final report informing commission of offences u/s.342, 323 IPC and 3 (i)(x) of the SC/ST Act against first accused and u/s.355, 342 and 3(i)(x) of the SC/ST Act before learned Judicial Magistrate, Kallakurichi. On committal, the case was tried in S.C.No.276 of 2009 on the file of learned Principal Sessions and Special Judge, Villupuram.

3. Before trial Court, prosecution examined 10 witnesses and marked 13 exhibits. None were examined on the side of defence nor were any exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 02.09.2010, convicted first accused for offences u/s.323(3 counts), 342 IPC and 3(i)(x) of SC/ST Act and second accused for offences u/s.355, 342 IPC and 3(i)(x) of SC/ST Act and sentenced first accused to fine of Rs.200/- for each count i/d 3 month S.I. for offence u/s.323(3 counts) IPC, fine of Rs.500/- i/d 3 months S.I. for offence u/s.342 IPC and 2 years R.I. and fine of Rs.5,000/- i/d 3 months R.I. for offence u/s.3(i)(x) of SC/ST Act and second accused to fine of Rs.5,000/- i/d 3 months S.I. for offence u/s.355 IPC, fine of Rs.500/- i/d 3 months S.I. for offence u/s.342 IPC and 2 years R.I. and fine of Rs.5,000/- i/d 3 months R.I. for offence u/s.3(i)(x) of SC/ST Act. Against such finding, the present appeal has been preferred.

4. Heard learned counsel for appellants and learned Additional Public Prosecutor.

5. Learned counsel for appellants submitted that even as per Ex.P12, First Information Report, persons by name, Sathya and Abirami had left the place earlier, they having been ill. While so, Ex.P1 also informs assault on Sathya. It is not the prosecution case that Sathya informed as the person assaulted in the First Information Report, is a person different from the person by name Sathya, who had left the scene. Ex.P1 reflects an inherent improbability. Learned counsel further submitted that as per Ex.P1, First Information Report, the victims were detained in a room after having been assaulted. Again, whereas as per Ex.P1, First Information Report, the victims had been released the very next date, in Court, PW-1 had spoken to having been released two days after the occurrence. PW-9, Inspector of Police, Chinna Salem Police Station, registered the complaint and forwarded the same to Deputy Superintendent of Police. Learned counsel also submitted that while PW-1 has spoken to having informed the Village President whereupon such person had, over phone, requested first accused to attend in person and further, that the Village President had questioned first accused on why he has detained victims and advised him to let them free to which first accused had replied that he would not do so and further abused using caste names, it is the evidence of PW-10, Investigation Officer, that he had not been so informed. Rule 7 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1995, required that investigation be conducted by a police officer not below the rank of a Deputy Superintendent of Police. Such rule had not been complied with. Learned counsel relied on judgment of this Court in V.Ponnusamy v. State [Crl.A.No.277 of 2008 dated 08.02.2016].

6. Heard learned Additional Public Prosecutor on the above submissions, who submitted that PW-10, Investigation Officer in the case, held the rank of a Deputy Superintendent of Police and he specifically had spoken to having taken up investigation in the case on the directions of Superintendent of Police and hence, Rule 7 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1995, stood complied with.

7. This Court has considered the rival submissions.

8. On appreciation of rival contentions, this Court would inform that the prosecution case bristles with infirmities pointed out by learned counsel for appellants. The following is to be found in the decision of this Court in Crl.A.No.277 of 2008:

'6. In 1995, in pursuance of Section 23 of the SC & ST (P.A.) Act, 1989, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules,

1995 has been framed. Its Rule 7 relevant for our purpose runs as under:-

"7. Investigating Officer.--(1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account 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.

(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government."

27. In view of the nature of the offence, Higher Officials namely an Officer not below the rank of a Deputy Superintendent of Police has been specified in the Rules, to investigate this type of offences. Further Rule 7(1) specifically mentions that the D.S.P. should have specified past experience etc. Further, as per Rule 7(2), the investigation has to be completed within 30 days.

28. In *Mrs. Mariammal vs. State of Tamil Nadu* {1998 (1) MWN (Cr.) 349}, this Court interpreted the said Rule as under:-

"18. It follows from this Rule that it is mandatory in the case of an offence complained of under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 that the investigation should be done by a Deputy Superintendent of Police and not the Inspector of Police, whatever may be the allegation as true or otherwise. In other words even if the allegations in the FIR are not true, even then the case can be investigated by the Deputy Superintendent of Police and not by the Inspector of Police."

29. In *Sambasivam and Another vs. State* {2007 (1) MWN (Cr.) 69}, this Court had occasion to go elaborately into the significance of the said Rule 7 (1). In *Sambasivam (supra)*, the Court observed as under:-

15. Rule 7(1) of the Rules reads:

"An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director-General of Police/Superintendent of Police after taking into account 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."

16. A careful reading of the above Rule and its purpose would reveal, that an Investigating Officer has to be appointed to investigate this kind of cases by the State Government/Director General of Police/Superintendent of Police, taking into account the past experience, sense of ability etc. of the officer and this is possible only if the individuals are considered separately. Rule does not say that all the Deputy Superintendents of Police are competent to investigate this kind of cases, irrespective of their experience, sense of ability etc. Therefore, in my considered opinion, a person, who has been named and appointed, considering his past experience and ability alone is competent to investigate this kind of cases, otherwise, the purpose of the Rule will not be served. If all the Deputy Superintendents of Police of the State are empowered, as observed by the trial Court, placing reliance upon some circular, which is not available for perusal, before me, then, there may not be any chance for the higher authorities to take into account the past experience, sense of ability and justice to perceive the implications of the case of the officer, which were considered so essential, to investigate this kind of cases, considering the sensitiveness and the caste discrimination prevailed or prevailing throughout, though we have crossed so many years from the date of independence. When the Rules framed under the Act, says how, by whom the case is to be investigated, I am of the view, the same cannot be nullified or overlooked, by issuing a circular, empowering all the Deputy Superintendents of Police, to investigate this kind of cases, forgetting or ignoring the purport of Rule 7, which is mandatory, not challenged. If it is to be taken, all the Deputy Superintendents of Police are empowered, the Rule need not say, past experience, sense of responsibility etc., simply it would have been stated "by the officer not below the rank of Deputy Superintendent of Police"

in general form, which is not the import or purport of Rule 7, as read from its proper perspective.

17. The learned counsel for the appellants, inviting my attention to a decision of the Division Bench of the Andhra Pradesh High Court in Viswanadhula Chittibabu vs. State of A.P. (2002 (4) Andhra Law Times Reports 456), would submit that the investigation done by any person, not authorised under Rule 7 of the Rules, should be treated as prejudice caused to the accused, since Rule 7 is mandatory and not directory. It is observed in the above Ruling:

The Act was enacted in the year 1989, whereas the Rules were framed in the year 1995, under Section 23 of the said Act. There was a delay of about six years in framing the Rules. It has to be considered why the Government framed this Rule. According to our logic, the Government experienced that the Act is being misused and therefore, felt that under such Acts, the investigation has to be done by a responsible Senior Officer and therefore, they chose Dy.S.P. to make an investigation. This Rule does not provide that all Dy.S.Ps. can investigate into the matter but provides that the Dy.S.P., named by the State Government or Director General of Police or Superintendent of Police has to nominate and select a Dy.S.P., with integrity and experience to investigate into such offences, which will prevent the misuse of the Act, and therefore, the provision contained in Rule 7 of the said Rules has to be interpreted as mandatory. In some of the rulings cited, their Lordships held that if there were procedural defects, the trial would not vitiate. The procedure means a procedure, which is adopted by the Court. When the investigation has to be done by a Police Officer not below the rank of Dy.S.P. under Rule 7 of the said Rules framed under Section 23 of the said Act, it has some meaning. It is not the procedural defect, it is inherent defect in making the investigation and that would vitiate the entire trial."

The said reasonings are legally sound and I should follow, as concluded by me in the previous paragraph.

18. The same view was taken by this Court also in H.THENMOZHI vs. INSPECTOR OF POLICE, P.R.C.UNIT, St.THOMAS MOUNT POLICE STATION, CHENNAI AND ANOTHER [(2006) 2 MLJ (Cr1.) 463], wherein it is stated that the investigation done by the Inspector of Police vitiates the entire proceedings and the accused is entitled to an acquittal. In the case involved in the

above decision, as seen from the judgment, the investigation has been done by the Inspector of Police and the same has been forwarded to the DSP, to investigate the matter further, probably considering the fact, the investigation by the Inspector of Police goes to the root of the matter. This Court, considering the above facts, took the view that the same would vitiate the entire proceedings, giving acquittal, which should be followed by me also, since I am in conformity with the view expressed by the learned Judge.

30. Recently, in Sekar and others vs. D.S.P., Pudhuchatram {CDJ 2011 MHC 5916}, this Court while referring to the said Rule 7(1) reiterated the its earlier views which we have seen already.

31. In Asmathunnisa vs. State of A.P. (CDJ 2011 SC 332), referring to the said Rule 7(1) when the Investigating Officer namely D.S.P. is not the person as contemplated in the Rules, in other words, not specifically empowered referring to his past experience, the Apex Court held him an incompetent Police Officer to investigate such an offence.

32. Now considering the above Rule position and the decisions on the point, there cannot be quarrel over the proposition that it is not all the D.S.Ps. even Police Officers above him in rank cannot investigate the offences alleged to have been committed under SC & ST (P.A.) Act, 1989 unless they are specifically empowered by the Government or by the Superintendent of Police (in case of Metropolitan Cities, the Deputy Commissioner) taking into account their past experience and sense of ability etc.

33. The consequence of investigation done by a Police Officer not below the rank of a Deputy Superintendent of Police who has not been so empowered as mandated in Rule 7(1) has been pointed out by this Court in Sambasivam (supra) that the entire proceedings is vitiated.

34. Now in this case, PW-15 Subramaniam, D.S.P., Avinashi Sub Division took up his investigation on 25.4.2007. No materials or records to show that he has been empowered to undertake investigation with the required authorisation as contemplated under Rule 7 (1). ?

25. Now on this aspect, we will revert to the case before us.

26. No doubt, PW-11 is a Deputy Superintendent of Police, but the point is whether then he was statutorily qualified to investigate this case registered under SC & ST (P.A.) Act, 1989. There is no record to show that a specific order empowering him to investigate this case has been passed by the District Superintendent of Police taking into account his special qualification as prescribed under the Rules. Further, nowhere in his evidence, PW-11 would say that he has been so empowered. In such circumstances, Periyasamy's case squarely applies to this case.'

9. This Court finds itself in respectful agreement with the views expressed and reproduced herein above. Even if this Court accepts the position informed by PW-10, Investigation Officer, that he was directed by the Superintendent of Police to investigate the case, there is nothing to indicate that in appointing him as the investigation officer the considerations informed in Rule 7(2) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, were met. Rule 7(2) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1995, reads as follows:

'7(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government.'

10. In the instant case, the First Information Report has been registered on 27.12.2007 and the final report has been filed before the concerned Court on 28.01.2008. Besides such non-compliance with Rule 7(2) there is no material to indicate that the other requirements of the rule were complied with. One further submission of learned counsel for appellants is that when PW-7, witness to the observation mahazar, has been treated hostile since he had deposed to having been called to the police station to sign the same, Rule 6(1) of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules which required the investigation officer to visit the place of occurrence to assess the extent of atrocity, loss of life, loss and damage to the property and submit a report forthwith to the State Government, had not been complied with. The prosecution case only is further weakened by the fact that the evidence of PW-7, mahazar witness, informs of his having been required to

sign the same at the police station.

The Criminal Appeal shall stand allowed. The judgment of learned Principal Sessions and Special Judge, Villupuram, passed in S.C.No.276 of 2009 on 02.09.2010. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

- 1 The Judicial Magistrate, Kallakurichi.
 - 2 Do Thro the Chief Judicial Magistrate, Villupuram.
 - 3.The Principal Sessions and Special Judge,
Villupuram.
 - 4.The Deputy Superintendent of Police,
Chinna Salem Police Station,
Chinna Salem, Villupuram District.
 - 5.The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.Saravanan Advocate SR.No.66062

SDR 17.11.2017

Crl.A.No.595 of 2010

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