

Bail Slip

The appellant in Crl.A.426 of 2008 (sole accused in S.C.NO.11 of 2006 on the file of Principal Sessions Judge/Special Judge, under the S.C.and S.T.(P.A) Act, 1989, Krishnagiri) namely Venkatraj @ Venkatesappa was released on bail vide order of this Court, dated 18.06.2018 made in Crl.MP.No.1 of 2008 in Crl.A.426/08.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.426 of 2008

Venkatraj @
Venkatesappa

..Appellant/Sole Accused

vs.

The State,by
Deputy Superintendent of Police,
Denkanikottai Sub Division,
Kelamangalam Police Station,
Krishnagiri District.
(Crime No.161 of 2005)

... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., to call for the records and set aside the judgment and conviction dated 29.04.2008 made in S.C.No.11 of 2006 on the file of the learned Principal Sessions Judge cum Special Judge for S.C & S.T (P.A.) Act, Krishnagiri and acquit the petitioner.

For Appellant : Mr.K.Sadasivam
Legal Aid Counsel

For Respondent : Ms.M.F.Shabana,
Government Advocate (Crl. side)

JUDGMENT

The appellant in this appeal is the sole accused in S.C.No.11 of 2006, on the file of the learned Principal Sessions Judge cum Special Judge for S.C & S.T (P.O.A.) Act, Krishnagiri. He stood charged for the offences punishable under Sections 3(1)(x) and 3(1)(xi) of S.C & S.T (P.O.A.) Act 1989 and also under Section 324 IPC. The Trial Court, after

trial, by judgement dated 29.04.2008, convicted the appellant/accused under Section 324 IPC and sentenced him to undergo rigorous imprisonment for one year and no fine amount was imposed and acquitted the appellant/accused for the offence under Sections 3(1)(x) and 3(1)(xi) of S.C & S.T (P.O.A.) Act 1989. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

P.W.1 is the injured witness in this case. On 2.10.2005, at about 4.30 p.m. while she was going to her house, the accused pulled her hand and while she was trying to escape from him, he attacked her hand with sickle and scolded her in filthy language and abused her. Then, P.W.1 went to the Government Hospital, Thenkanikottai. P.W.11, Doctor, who was working in the Government Hospital, Thenkanikottai, admitted P.W.1 at about 7.30 p.m and found cut injury on her left hand. He has issued Accident Register Ex.P.8, stating that the injuries are minor in nature. P.W.10, the then Inspector of Police attached to the respondent police Station, on receipt of the Memo from the hospital, on 5.10.2005, at about 9.00 p.m proceeded to the Government Hospital and recorded the statement of P.W.1. Based on the said statement, he registered a case in Cr.No.161 of 2005, under Sections 3(1)(x) and 3(1)(xi) of S.C & S.T (P.O.A.) Act 1989 and Section 324 IPC. He prepared F.I.R and sent it to the higher officials. P.W.13, Deputy Superintendent of Police, on receipt of F.I.R, commenced the investigation and proceeded to the scene of occurrence and he prepared Observation Magazar (Ex.P.7) and Rough Sketch (Ex.P.8). On 16.10.2005, he arrested the accused. On such arrest, the accused voluntarily gave a confession statement. Based on the said statement, he recovered a sickle from his house and he obtained Community Certificates Ex.P.5 for P.W.1 and Ex.P.9 for the accused and recorded the statements of P.W.1 and other witnesses. After completion of investigation, he laid charge sheet against the accused under Sections 3(1)(x) and 3(1)(xi) of S.C & S.T (P.O.A.) Act 1989 and Section 324 IPC.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the judgment. The appellant/accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 11 documents were exhibited, besides 1 material object was marked.

4. Out of the witnesses examined, P.W.1 is the injured eye witness in this case. According to her, on 2.10.2005, at about 4.30.p.m, while she was going home, the accused pulled her hand and while she was trying to escape from him, he attacked P.W.1 with M.O.1 Sickle. Thereafter, she went

to Thenkanikottai Government hospital, wherein she was admitted and subsequently, the police recorded her statement and registered a case. P.W.2 has turned hostile. P.W.3 is only a hearsay witness. P.W.4 is a relative of P.W.1. He took P.W.1 to the hospital where, she told him that the accused called her, she refused and while she was trying to escape from him, he attacked her with Sickles. On the next day, since P.W.1 only knows Kanada, her statement was translated by her relative P.W.4, and the same was recorded by P.W.13, the Deputy Superintendent of Police. P.W.5, is the daughter of P.W.1. According to her, after the occurrence, she took P.W.1 to hospital. Next day morning, the Deputy Superintendent of Police came and recorded the statement of P.W.1. P.W.6 is an eye witness to the occurrence, corroborate P.W.1's evidence. P.W.7 is a witness to the Observation Magazar. P.W.8 has turned hostile. P.W.9, was a Deputy Tahsildar, issued community certificate to the accused. P.W.10 is the then Inspector of Police. He recorded the statement of P.W.1 and on 5.10.2005 at about 9.00 a.m he registered a case in Crime No.161 of 2005.

5. P.W.11, Doctor, examined P.W.1 and issued Accident Register Ex.P.8. P.W.12, Tahsildar, issued Community Certificate to P.W.1. P.W.13, the Deputy Superintendent of Police, conducted investigation and recorded the statement of witnesses and arrested the accused. After completion of investigation, he filed a charge sheet against the accused under Sections 3(1)(x) and 3(1)(xi) of S.C & S.T (P.O.A.) Act 1989 and Section 324 IPC.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, the accused did not choose to examine any witness and no document was marked on his side.

7. Having considered all the above materials, the Trial Court convicted and sentenced the appellant/accused for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

8. I have heard Mr.K.Sadasivam, learned counsel appearing for the appellant and Ms.M.F.Shabana, learned Government Advocate (Criminal Side) appearing for the State and I have also perused the records carefully.

9. The learned counsel for the appellant has submitted that there was a long delay in lodging the complaint. The occurrence said to have taken place on 2.10.2005 at about 4.30 p.m and the injured was admitted in the hospital at about 7.30 p.m. But, F.I.R has been registered only on 5.10.2005 at

about 9.00 a.m. and there was a delay of 3 days and the delay has not been properly explained by the prosecution, which creates a doubt in the prosecution case and hence, the prosecution failed to prove the case beyond reasonable doubt. Hence, he requested this Court to allow the appeal.

10. I find some force in his arguments. According to P.W.1, the occurrence took place on 2.10.2005 at about 4.30 p.m and she was taken to the hospital by P.W.4 and P.W.5 and they have admitted her at about 7.30 p.m. The police came to the hospital and the daughter of P.W.1 has given statement to the police. P.W.4, the another relative, who took P.W.1 to the Government Hospital and he had stated that he admitted P.W.1 in the hospital on 2.10.2005 and on the next day, the Deputy Superintendent of Police P.W.13 came to the hospital and recorded her statement. Since P.W.1 has known only kannada, P.W.4 translated the statement of P.W.1 and the same was recorded by P.W.13. Even though P.W.13, in his cross-examination stated that the statement of P.W.1, P.W.4 and P.W.5 were recorded by him on 3.10.2005, they have categorically stated that their statements were recorded by the Deputy Superintendent of Police only on 2.10.2005. P.W.5, in his evidence has stated that he admitted P.W.1 in the hospital on 2.10.2005. On the next day, P.W.13, the Deputy Superintendent of Police came and recorded the statement of P.W.5 and her mother has also given the statement to the Deputy Superintendent of Police. According to P.W.10, he went to the hospital on receipt of Memo dated 5.10.2005 and he recorded the statement of P.W.1 and based on the same, he registered a case in Cr.No.161 of 2005 at 9.00 a.m on 5.10.2005. Considering the above, it could be seen that though the intimation Ex.P.6 was sent by the hospital on 3.10.2005 itself, and statements were recorded on that date but P.W.10 registered the case only on 5.10.2005, hence it creates a doubt in the prosecution case.

11. Apart from that P.W.1, P.W.4 and P.W.5 have categorically stated that their statement were recorded by the Deputy Superintendent of Police on 3.10.2005 itself, that be so it is not known why P.W.10, Inspector of Police, recorded the statement of witnesses only on 5.10.2005, based on which, registered the case, which also creates a doubt in the prosecution.

12. Apart from that, P.W.1 also did not identify the weapon. M.O.1 - Sickle, which is said to have been used by the accused in the crime. In all the above circumstances, without considering the same, the Court below convicted the petitioner on erroneous consideration of evidence.

13. In the above circumstances, I am of the considered view that the prosecution has not proved the case beyond any reasonable doubt and the accused has to be acquitted from the charge under Section 324 IPC.

14. In the result, the conviction and sentence imposed on the appellant under the judgment passed in 29.04.2008 in S.C.No.11 of 2006 on the file of the learned Principal Sessions Judge cum Special Judge for S.C & S.T (P.O.A.) Act, Krishnagiri is set aside and the criminal appeal is allowed. The accused is acquitted of the charge under Section 324 IPC. The bail bond, if any, executed him shall stand cancelled.

15. While parting with the case, I appreciate the services rendered by Mr.K.Sadasivam, learned counsel, appeared on behalf of the appellant as Legal Aid Counsel. The State Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge
cum Special Judge,
for S.C & S.T (P.O.A.) Act,
Krishnagiri.
2. The District Munsif - Cum -Judicial
Magistrate, Denkanikottai.
3. The Chief Judicial Magistrate,
Dharmapur @ Krishnagiri.
4. The Deputy Superintendent of Police,
Denkanikottai Sub Division,
Kelamangalam Police Station,
Krishnagiri District.
5. The District Collector, Krishnagiri.
6. The Director General of Police,
Mylapore, Chennai-4
- 7.The Public Prosecutor, High Court, Madras.
8. The Section Officer, Criminal Section,
High Court, Madras.

Crl.A.No.426 of 2008

GJ(CO)

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