

Bail Slip

The Appellant / Accused No.I.Jayakrishnan S/o. Ramasamy aged 33 years, Accused No.II. Srinivasan S/o.Alagarsamy, aged 31 years and Accused No.III Prabhu S/o.Selvaraj aged 23 years are released on bail in mp 1/13 in Crl.A. 187/13 dated 11/3/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.A.No.187 of 2013

and

M.P.No.1 of 2013

1. R.Jayakrishnan
2. A.Srinivasan
3. S.Prabhu

..Appellants/Accused 1 to 3

Vs.

State Represented by
Inspector of Police,

B-6, Peelamedu Police Station.

..Respondent/complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code praying to allow this appeal by calling for the records and set aside the Judgment in S.S.C No.03/2012 on the file of learned Special Judge/Principal sessions Judge vide Judgment dated 28.02.2013 convicting the 1st appellant U/s. 3(i) (X) of the SC/ST Act sentencing him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.1000/- in default to undergo Simple Imprisonment for one month and convicting the 2nd appellant under section 323 I.P.C(2 counts) and sentencing him to undergo simple Imprisonment for 3 months on each count and to pay Rs.500/- on each count in default to undergo simple Imprisonment for one month on each count and the 3rd appellant for offence under section 323 IPC and convicted and sentenced to undergo simple imprisonment for 3 months and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month and acquit the appellant.

For Appellants : Dr.G.Krishnamurthy

For Respondent : Mr.M.Mohamed Riyaz
Government Advocate(crl.side)

J U D G M E N T

This Criminal Appeal arises against judgment of learned Special Judge/Principal Sessions Judge, Coimbatore, passed in Spl.S.C.No.3/2012 dated 28.02.2013, convicting first appellant u/s. 3(i)(x) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') and sentencing him to 6 months R.I. and fine of Rs.1,000/- i/d 1 month S.I. and convicting second appellant for offence u/s.323 I.P.C(2 counts) and sentencing him to 3 months S.I. on each count and fine of Rs.500/- on each count i/d 1 month S.I. on each count and convicting third appellant for offence u/s.323 IPC and sentencing to 3 months S.I. and fine of Rs.500/- i/d 1 month S.I.

2(i) The case of the prosecution is that Thirumoorthy (P.W.1), Anbalagan (P.W.2) and Thiruvendran (P.W.3) sons of one Murugesan belong to scheduled caste community and are residents of Avarampalayam. P.W.4 and the three accused are also residents of the same place. On 18.02.2011, at about 22.00 hrs, when P.W.1 was having tea at 'Red Rose Bakery', located in Avarampalayam, A2/Srinivasan purposely caused hurt to one Thirumoorthy/defacto complainant-P.W.1 and A3/Prabhu, shouted at him in filthy language and slapped defacto complainant/P.W.1 and first accused/Jayakrishnan, shouted at the defacto complainant in filthy language by mentioning his caste and also caused using a brick. A2 also caused hurt to one Anbalagan (P.W.2) with bricks. On hearing the news, P.W.3-brother of P.Ws 1 & 2, came to the place of occurrence and on seeing him, all the accused fled the place. P.Ws 1 & 2 were taken to the Coimbatore Medical Hospital.

(ii) P.W.9-Dr.Raghuramaiah, Medical Officer attached to the Coimbatore Medical College Hospital, examined P.W.1 and P.W.2 and issued Exs.P8 & P9- copies of Accident Registers for the injuries sustained by P.W.1 & P.W.2. According to P.W.9-Doctor, the injury sustained by P.W.1 & P.W.2 were, simple in nature. The Doctor-P.W.9, also sent intimations (Ex.P10 & Ex.P11) to the Police.

(iii) P.W.8-Sub-Inspector of Police attached to B6 Peelamedu Police Station, went to Coimbatore Medical College Hospital and recorded statements-Ex.P1, given by P.W.1 and registered a case in Cr.No.287 of 2011, for offences under sections 75(1)(c) of the T.N.C.P.Act, 323, 324 IPC and 3(1)(x) of the SC/ST Act. The Sub-Inspector of Police forwarded the complaint to learned VI Judicial Magistrate, Coimbatore, and also submitted copy of F.I.R. to the Assistant Commissioner of Police.

(iv) P.W.11- the then Assistant Commissioner of Police, Coimbatore East, took up investigation and as per the orders of the Deputy Commissioner of Police under Ex.P11, he visited the scene of occurrence and prepared the observation mahazar -Ex.P2 and sketch-Ex.P14, and also seized bricks (M.Os 1 & 2) in the presence of P.W.6-Arumugham and one Sundararaj. Assistant Commissioner also examined the above witnesses, recorded their statements, effected the arrest of A2 & A3 and sent them for remand. After completing investigation, he filed a charge sheet.

3.To substantiate its case, prosecution examined PWs.1 to 11 and marked Exs.P1 to P15. None were examined on behalf of the defence nor any exhibits were marked. M.Os 1 & 2- Brick Stones were marked on the side of the prosecution. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of the evidence, under judgment dated 28.02.2013, convicted first appellant u/s. 3(i)(x) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'SC/ST Act') and sentenced him to 6 months R.I. and fine of Rs.1,000/- i/d 1 month S.I. and convicted second appellant for offence u/s.323 I.P.C(2 counts) and sentenced him to 3 months S.I. on each count and fine of Rs.500/- on each count i/d 1 month S.I. on each count and convicted third appellant for offence u/s.323 IPC and sentenced to 3 months S.I. and fine of Rs.500/- i/d 1 month S.I.

4. Heard learned counsel for appellants and learned Government Advocate [Crl.side] as also perused the records.

5. Learned counsel for appellants submitted that PW-8 had admitted that PW-1 had not informed him of use of any caste name by the accused. Even so, PW-8 had registered the case also for offence under the prevention of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989. The same is depictive of slanted investigation. Ex.P8 & Ex.P9- Accident Registers of P.Ws.1 & 2, initially have been entered as cases of Road Traffic Accident and subsequently, they have been altered into one of assault. However, Accident Register entries - Ex.P8 & Ex.P9, reflected entries to the effect that P.Ws.1 and 2 had been attacked by two unknown persons and suffered injuries which were simple in nature. Doctor-P.W.9 had admitted the correction of Exs.P8 and P9 from original entries of Road Traffic Accident.

6. P.W.3 was the brother of P.Ws 1 & 2, while P.W.4 had admitted to knowing the family members of P.Ws 1 & 2. Thus, though P.Ws 3 & 4 were cited as witness to the occurrence, they are to be treated as persons interested in P.Ws 1 & 2 and inimically disposed towards the accused. P.W.5 another alleged eye witness had turned hostile.

7. Learned counsel for appellants also submitted that the Investigating Officer-P.W.11, having recovered two brick stones from the scene of occurrence on 19.2.2011, sent to the Court through Form-95 only on the next day.

8. Heard learned Government Advocate (crl.side) on the submissions made by learned counsel for appellants.

9. The occurrence allegedly had taken place on 18.02.2011 at 10.00 p.m. PWs.1 and 2 have suffered injuries and have immediately been taken to hospital. On intimation, PW-8 has been to the hospital and recorded the statement of PW-1 and thereupon, the case has been registered on the very night of the occurrence. Given the admission of PW-8 that when he recorded the statement of PW-1 at hospital, PW-1 did not inform of any aspersions having been made on caste lines, the very registration of the case for offence under SC/ST Act is erroneous. PWs.1 to 4 are seen to be interested witnesses. The only natural witness whose presence at the scene, a tea shop, cannot be doubted is PW-5, a worker thereat. PW-5 has turned hostile. Exs.P8 and P9, Accident Registers, cause much doubt on how PWs.1 and 2 came to suffer injuries. The occurrence having taken place at night there is every possibility of an attack by unknown persons, informed in Exs.P8 and P9, Accident Register entries, being true. In the circumstances, the benefit of doubt ought to have been afforded to accused.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Special Judge/Principal Sessions Judge, Coimbatore, passed in Spl.S.C.No.3 of 2012 on 28.02.2013, are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Special Judge/Principal Sessions Judge,
Coimbatore.

2.Judicial Magistrate VI,
Coimbatore.

3.Do-Through Chief Judicial Magistrate,
Coimbatore.

4.The Inspector of Police,
B-6, Peelamedu Police Station.

5.The Public Prosecutor,
Madras High Court, Chennai.

The Section Officer,
Criminal Section,
High Court Madras.

Cr1.A.No.187 of 2013

PVS (CO)

RRK(17/01/2018)



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