

BAIL SLIP

The Appellants/Petitioners namely 1.Suresh,S/o.Narayanappa (22) 2) Narayanappa,S/o.Margonappa and 3) Lakshmi Ammal were directed to be released on Bail vide as per order dated 12.05.2009 made in MP 1 of 2009 in CrI.A No.247/2009 on the file of this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.A.No.247 of 2009

1.Suresh
2.Narayanappa
3.Lakshmi Ammal

... Appellants

Vs.

State represented by
The Inspector of Police,
Bagalur Police Station,
Bagalur,
Krishnagiri District
(Crime No.170 of 2005)

... Respondent

Prayer: Appeal filed under Section 374(2) of Cr.P.C. seeking to set aside the conviction and sentence passed by the learned Principal Sessions Judge/ Special Judge under the S.C. and S.T. (PA) Act, 1989 at Krishnagiri in S.C.No.143 of 2006 dated 20.04.2009.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.R.Ravichandran
Government Advocate (CrI. Side)

J U D G M E N T

The appellant has filed this appeal seeking to set aside the judgment dated 20.04.2009 made in S.C.No.143 of 2006 by the learned Principal Sessions Judge/ Special Judge under S.C. and S.T. (PA) Act, 1989 at Krishnagiri.

2.The appellants are the accused 1 to 3 in the case in S.C.No.143 of 2006. The brief case of the prosecution is as follows: P.W.1 is the daughter of P.W.2. P.W.2 is the sister of P.W.3. P.W.1 to P.W.5 and accused 1 to 4 are the residents of Perumalpalli. P.W.1 to P.W.3 belonged to Adi-Dravida Community. A1 to A4 belonged to Vannar Community. P.W.1 studied upto XII Standard at Bagalur Higher Secondary School and completed the education in the year 2004. P.W.1 and A1 loved each other while they were studying. A1 promised to marry her and assured that he will not leave her. During School days itself, A1 had sexual intercourse with P.W.1. Later since the parents of A1 did not agree to solemnize their marriage, P.W.1, her mother and her paternal uncle gave complaint before the Hosur Women Police Station. The Police summoned and enquired A1 and as requested by the Police, he tied Thirumangalyam on 25.03.2005 at Narashimmasamy Koil, Kolar.

3.After marriage, P.W.1 and A1 worked in the brick kiln factory for three months at Kolar. Thereafter, they stayed at Bagalur in a rental house belonging to one Ramesh. Whiles, one day A2, A3/ parents of A1 and the uncle of A1 came to their house and spoke to A1. From that day onwards A1 started to torture P.W.1 and neglected her since she belonged to lower caste.

4.A1 demanded dowry of 10 sovereigns of gold and a sum of Rs.10,000/- and compelled P.W.1 to bring it from her parental home. Thereafter, A1 left the marital home. Since A1 did not turn back, P.W.1 informed the same to her mother. Hence, P.W.1's uncle had taken her to the house of A1 to A3 and enquired about A1. The accused family scolded them by calling their community name. The uncle of A1 threatened her to inflict cut injury. Hence, they went to the Police Station and gave a complaint. The said complaint has been marked as Ex.P1.

5.On 11.10.2005 at 11.00 a.m., when P.W.7/ Inspector of Police, Bagalur was on duty, P.W.1 came to the Police Station and gave a written statement/ complaint. On the basis of the complaint, he registered a case in Bagalur Police Station in Crime No.170 of 2005 for the offence under Sections 498 (A), 417, 506 (ii) of IPC and under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989. The First Information Report prepared by

him has been marked as Ex.P8. Thereafter, he sent the complaint and FIR to the Court and its copies to the concerned Higher Officials. Since the case comes under the purview of Protection of Civil Rights Act, he sent requisition to the superintendent of Police for nominating Investigation Officer to investigate the case.

6.In pursuant to the proceedings of the Superintendent of Police under Ex.P.9, P.W.8/ the Deputy Superintendent of Police, Hosur had taken up the case for investigation. On 12.10.2005, P.W.8 went to the place of occurrence, inspected the same and prepared observation mahazer/ Ex.P2 in the presence of P.W.4 and one Hamsappa. He also drew rough sketch of the place of occurrence under Ex.P10. P.W.8 also examined witnesses P.W.1 to P.W.4 and recorded their statements. Thereafter, P.W.8 arrested A2 to A4 in front of their house.

7.On the requisition of P.W.8, P.W.6/ Tahsildar, Hosur issued Community Certificate/ Ex.P3 stating that P.W.1 belong to Adi Dravida Community and had also issued Community Certificates/ Ex.P4 to Ex.P7 stating that A1 to A4 belong to Vannar Community. P.W.8 also examined P.W.6 and P.W.7 and recorded their statements and after completion of investigation, filed final report as against A1 to A4 before the learned Judicial Magistrate No.I, Hosur, for the offence under Sections 498 (A), 506 (i) of IPC, under Section 4 of Dowry Prohibition Act and also under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989.

8.After furnishing the copies of final report to the accused as required under Section 207 of Cr.P.C., the learned Judicial Magistrate No.I, Hosur, had committed the case records to the Special Court under the S.C. and S.T. (PA) Act, 1989, under Section 209 (a) of Cr.P.C. as the offences alleged to have committed by the accused are exclusively triable by the Court of Session/ Special Court under S.C. and S.T. (PA) Act.

9.After the appearance of the accused and on hearing both sides, the Trial Court framed charges under Section 294 (b) of IPC, Section 4 of Dowry Prohibition Act and under Section 498 (A) of IPC as against A1; under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989 as against A2 and A3; under Section 506 (i) of IPC as against A4.

10.When the descriptions and the ingredients of the charges were explained and questioned, A1 to A4 pleaded innocent and claimed to be tried.

11. On the side of the prosecution, 8 witnesses were examined as P.W.1 to P.W.8 and 10 documents were marked as exhibits Ex.P.1 to Ex.P.10. On the side of the accused no witness was examined and no document was marked as exhibit.

12. After elaborate trial, the Trial Court convicted A1 for the offence under Section 498 (A) of IPC and convicted A2 and A3 for the offence under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989. The Trial Court acquitted A1 from the charges under Section 294 (b) of IPC and under Section 4 of Dowry Prohibition Act. The Trial Court also acquitted A4 from the charge under Section 506 (i) of IPC.

13. The Trial Court sentenced A1 to undergo 1 year rigorous imprisonment and to pay a fine of Rs.500/- in default to undergo 1 month rigorous imprisonment. The Trial Court sentenced A2 and A3 to undergo 6 months rigorous imprisonment each and to pay a fine of Rs.500/- each, in default to undergo 1 month rigorous imprisonment. Aggrieved by the said conviction and sentence, the appellants / A1 to A3 have filed this appeal before this Court.

14. The learned counsel appearing for the appellant would submit that initially P.W.1 lodged a complaint at the instigation of the Community Headmen. However, the said complaint was not processed. Again P.W.1 has filed a complaint implicating the accused in the above said offence. He would further submit that the statement of P.W.1 does not corroborate with the statements of P.W.2 and P.W.3 and it is also inconsistent.

15. The learned counsel appearing for the appellant would further submit that implicating the accused for the offence under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989 will not attract for the reason that to implicate a person in the said offence the commission of offence should be in public view. In the present case, P.W.1 to P.W.3 clearly states that the said occurrence was inside the house of A1. Further no public or resident was examined as prosecution witness to prove the guilt of the accused under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989.

16. The learned counsel appearing for the appellant would further submit that as per Section 498 (A) of IPC cruelty to a woman means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. However, in this case, there is no evidence to show that there was demand of additional amount. In the absence of any

evidence, convicting the accused for the offence under Section 498 (A) of IPC is un-sustainable one. Accordingly, he prayed for allowing the appeal.

17.The learned Government Advocate (Crl. Side) would submit that though there is some discrepancy in the complaint as well as the chief examination of P.W.1, the chief examination of P.W.1 makes it clear that A1 demanded dowry of 10 sovereigns of gold and a sum of Rs.10,000/-. It also clearly shows that A2 and A3 insulted the family members of P.W.1 by calling their community name in the public view. Even cross examination of P.W.1 clearly reveals that P.W.1 to P.W.3 were standing outside the house of the accused and A2 and A3 called P.W.1 and her family members by her community name. He would further submit that these incidents would clearly attract the offence punishable under Section 498 (A) of IPC and Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989.

18.The learned Government Advocate (Crl. Side) would further submit that only after analyzing the evidence adduced and the materials placed in detail, the Trial Court convicted the accused and the well considered judgment of the Trial Court need not be interfered

with in a mechanical manner. Accordingly, he prayed for dismissal of the appeal.

19.Heard the arguments advanced on either side and perused the materials placed on record.

20.In the light of the above submissions, now it has to be analyzed whether the prosecution has proved the guilt on the accused beyond all reasonable doubt and whether prosecution has established the ingredients required for implicating the accused for the offence under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989.

21.The undisputed facts are that A1 to A4 belong to Vannar Community and P.W.1 to P.W.3 belong to Adi-Dravida Community. A1 and P.W.1 loved each other even during the School days and upon the Police complaint he tied Thirumangalyam on 25.03.2005 at Narashimmasamy Koil, Kolar and married P.W.1. Thereafter, they started their matrimonial life at Kolar. After three months of their marriage, they stayed at Bagalur in a rental house belonging to one Ramesh. While being so, A2 to A4 visited their house.

22.Thereafter P.W.1 alleged that on their ill advice, A1 started to torture her and neglected her since she belonged to lower caste. Further P.W.1 alleged that A1 demanded dowry of 10

sovereigns of gold and a sum of Rs.10,000/- and insulted her by calling her community name and left the matrimonial home without taking care of her.

23.However, on perusal of the deposition of P.W.1 it is known that there was some dispute inbetween P.W.1 and A1 and A1 left the house and joined with his parents. Immediately thereafter, P.W.1 contacted her parental house and P.W.1 to P.W.3 went to the house of the accused to pacify the dispute inbetween A1 and P.W.1. There the accused abused P.W.1 to P.W.3 by calling their community name. Though the complaint lodged by P.W.1 did not reveal demand of additional dowry, P.W.1 in her deposition has specifically stated that A1 demanded 10 sovereigns of gold and a sum of Rs.10,000/-.

24.However, perusal of the depositions of P.W.2 and P.W.3 does not reveal any demand of additional dowry and they only made allegation that the accused insulted them by calling their community name and they did not support the evidence of P.W.1. There are lot of difference in between the evidence of P.W.1 and the evidence of P.W.2 and P.W.3. The evidence of P.W.2 and P.W.3 does not corroborate with the evidence of P.W.1 in respect of the harassment and demand of additional dowry.

25.In this background, it is necessary to analyze whether the prosecution has proved the guilt on the accused for the offence under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989.

26.For better appreciation, it is relevant to extract hereunder Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989:

"3 Punishments for offences of atrocities:-

(1) Whoever, not being a member of a Scheduled caste or a Scheduled Tribe

(x) "Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

(xi) assaults or uses force to any woman belonging to a Scheduled Caste or Scheduled Tribe with intent to dishonour or outrage her modesty;"

27.On a perusal of the above provision makes it clear that for the offence under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989, there must be intentional insults or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. However, in

the present case, no independent witness was examined to prove that the accused called P.W.1 to P.W.3 by their community name in public view.

28.It is relevant to note that the Trial Court convicted the accused on the ground that the accused insulted P.W.1 to P.W.3 by calling their community name in the presence of the residents of the locality. However, the presence of the residents of the locality is nowhere available in the evidence of P.W.1 to P.W.3.

29.In this background, it is relevant to extract hereunder the relevant portion of the decision of the Hon'ble Apex Court reported in (2000) 2 CrL.L.J. 1978 (Gowra Gobinda Vs. State of Orissa):

"8.In the present case, both P.Ws.2 and 5 are silent regarding the presence of any member of public at the time of the alleged occurrence though P.W.5 has stated that some persons reached the spot when there was hurling of abuse by the appellants. Even if it is believed for the sake of arguments that the appellants had called P.Ws.2 and 5 by their caste, they could not have intended to insult them in public view and merely calling someone by his caste does not constitute an offence. To attract the provisions of the Act, it is necessary that it should be in place where public could view the incident. In a case of this nature, the trial Court should exercise care and caution before holding accused guilty of the charge, especially when the chances of falsely implicating the accused by persons in authority cannot be ruled out. Therefore, it is clear from the above case laws that the offence falling under Sec.3 (1) (x) of the Act should have been committed in any place within "public view" and if this element is not present, then the conviction cannot be sustained."

30.It is also relevant to extract hereunder the relevant portion of the decision of this Court reported in (2002) MLJ (CrL.) 202 (Victor Paul and another Vs. State):

"4. the word "public view" is not defined in the Act. The dictionary meaning of the word "public" is "open to the people as a whole, the dictionary meaning of the word "view" is vision or sight as from a particular position. Reading these two

meanings together in the context of the words "public view, it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place within "public view" or in any other place within "public view". In either situation, the essential element that requires to be established is that it was in "public view". The word "public view" in the Section is preceded by the word "in any place within". Therefore, it is clear to my mind that insult or intimidation should be in a place within public view."

31.Perusal of the decisions cited supra, makes it clear that intimidation should be in the place of public view. In the present case, the accused intimidating P.W.1 to P.W.2 in public place has not been proved. Hence, I have no hesitation to state that the prosecution has not proved the guilt on the accused for the offence under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989, beyond all reasonable doubt.

32.As stated above, after marriage, A1 and P.W.1 stayed at Bagalur in a rental house belonging to one Ramesh. On a perusal of the evidence of P.W.1 discloses that P.W.1 and A1 lived happily for a few months and thereafter, A1 changed his attitude and insulted P.W.1 by uttering that P.W.1 belongs to a lower caste and committed cruelty on her. However, the evidence of P.W.1 is contrary to the conclusion of the Trial Court that A1 left the matrimonial home without any intimation. Mere leaving P.W.1 will not attract the offence punishable under Section 498 (A) of IPC. There are several reasons for leaving the matrimonial home. It does not amount to cruelty or harassment.

33.With regard to the demand of additional amount from the parents of P.W.1, P.W.1 has stated about the demand in her complaint/ Ex.P1 and she has stated about the demand only in her examination. That improved version of P.W.1 cannot be accepted. Hence, I have no hesitation to state that the prosecution has not proved the guilt on the accused for the offence under Section 498 (A) of IPC beyond all reasonable doubt.

34.Since the Trial court has invited convictions and sentences, merely on the basis of surmises and conjectures, the convictions and sentences passed by the Trial Court are not factually and legally sustainable and altogether, the present criminal appeal is liable to be allowed.

35. In the result, the criminal appeal is allowed. The conviction and sentence as against the appellants/ A1 to A3 in the judgment dated 20.04.2009 in S.C.No.143 of 2006 passed by the learned Principal Sessions Judge/ Special Judge under S.C. and S.T. (PA) Act, 1989 at Krishnagiri, are set aside. The first appellant/ A1 is acquitted from the charge under Section 498 (A) of IPC. The appellants 2 and 3/ A2 and A3 are acquitted from the charge under Section 3 (1) (x) of S.C. and S.T. (PA) Act, 1989. The fine amount, if any, paid by the appellants are ordered to be refunded to them. The bail bonds, if any, executed by them, shall stand terminated/ discharged.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge/
Special Judge under S.C. and S.T. (PA) Act, 1989
at Krishnagiri.
2. The Judicial Magistrate No.1, Hosur.
3. The Chief Judicial Magistrate,
Krishnagiri @ Dharmapuri (for information)
4. The Inspector of Police,
Bagalur Police Station,
Bagalur, Krishnagiri.
(Cr.No.170/2005)
5. The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras -104.

+1cc to Mr.N.Mohideen Basha , Advocate, S.R.No.86868

CrI.A.No.247 of 2009

RGN(CO)
KAK(31/01/2019)