

Bail Slip

Murugesan @ Murugesh S/o Iyyanar Accused in S.C.No.11 of 2006 on the file of Principal District Cum Sessions Court, Namakkal was enlarged on bail by this Court order dated 09/05/2006 in CrI.M.P.No.3162 of 2006 in CrI.Appeal No.443 of 2006 and since the Non Bailable Warrant already issued by the trial Court against the accused was pending, subsequently an Conditional order was issued in CrI.M.P.No.4550 of 2006 in CrI.Appeal No.443 of 2006 vide order dated 14.12.2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.443 of 2006

Murugesan @ Murugesh ... Appellant/Accused

Vs.

The State by Deputy Superintendent of Police,
Tiruchengode,
Erode District. ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records pertaining to the case in S.C.No.11 of 2006 on the file of the Principal District cum Session Court (Designated under Act 33/1989 (Special Court) at Namakkal dated 28.03.2006 and to set aside the same.

For Appellant : Mr.V.Balamurugane

For Respondent : Mrs.T.P.Savitha

Government Advocate (CrI.Side)

JUDGMENT

That the instant Criminal Appeal is filed as against the judgment of conviction and sentence passed in S.C.No.11 of 2006, dated 28.03.2006 on the file of the learned Principal District and Sessions Judge, Namakkal.

2.The appellant herein is the sole accused in the above sessions case and according to the version of the Learned Counsel for the appellant the case of the prosecution is that on 26.03.2005 at 3:30 p.m., in front of the house of PW-3, Ayyaoo in the public place the accused / appellant herein who belongs to Hindu Padayachi Community, in respect of money transaction scolded the said Ayyaoo @ Marappan who belongs to scheduled caste Parayar community by using filthy words and also by uttering his caste name. The said incident had happened in a public place and in the presence of PW-3 Ayyaoo's wife Marayee (PW4) when the said incident was questioned by PW-4 she was also humiliated by the accused.

3.It is the case of the prosecution that when PW2, the daughter of PW-3 and PW-4 namely Vanitha questioned the above lawless act of the accused, the PW-2 was in turn abused by the accused in unparliamentarily words touching upon her conduct and further appellant outraged the modesty of PW3 physically and also insulted PW3 as she belongs to scheduled caste community.

4.It is the further case of the prosecution that in continuation of the above quarrel, on the same day that is on 26.03.2005 at about 7.00 p.m., when Pw1 Gunasekaran questioned as to why the accused has injured and humiliated his parents in the name of their community, PW1 was attacked by the appellant. When the PW5, namely Peter made an attempt to interrupt and stop the quarrel, the appellant also injured and humiliated by abusing him in the name of his community. According to prosecution, the said PW5 also sustained minor injuries out of the above attack.

5.In order to substantiate the prosecution case, they examined 16 witnesses as Pw-1 to Pw-16 and marked Ex-P1 to Ex-P31 and further M.O.1 to M.O.3 were produced. After trial, the Learned Trial Judge found guilty of the accused for the offences stated above and the accused was questioned in respect of the proposed punishment, he pleaded not guilty.

6.Thereupon the Learned Judge convicted and sentenced the accused to undergo 6 months R.I. and fine of Rs.500/- on three counts for the offence under Section 3(1)(X) of the Prevention of Atrocities Scheduled Caste and Scheduled Tribe Act, 1989, in default to pay fine, the accused shall undergo two weeks Rigorous Imprisonment, the accused shall undergo 6 months Rigorous Imprisonment, fine of Rs.500/- and in default to pay fine amount he shall undergo 2 weeks Rigorous Imprisonment for

the offence under section 3(1)(X) of SC/ST Act, the accused should pay a fine amount of Rs.500/- (2 counts), in default to pay the fine amount, he shall undergo one week Simple Imprisonment for the offence under Section 294(b) of IPC and the accused shall undergo 2 months Rigorous Imprisonment and imposed fine of Rs.500/-, in default to pay the fine amount, 2 weeks Rigorous Imprisonment was ordered for the offence punishable under Section 324 of IPC. The accused was fined to a sum of Rs.1000/- in default to pay the fine amount, he shall undergo 2 weeks Simple Imprisonment. The accused was acquitted from the charge of section 323 of IPC. The sentences imposed on the accused are ordered to run concurrently. The period already undergone was ordered to set off as per section 428 of Cr.P.C.

7. In this case, out of 16 witnesses, PW1 is the victim who deposed that on 26.03.2005 when he was not in the house, the accused came to his house and uttered abusive words at his parents and sister PW2 to PW4 by mentioning their caste name. The said occurrence had happened in connection with the non repayment of the loan amount of Rs.1000/- borrowed by PW-1 from the appellant. The said incident was reported to him by his father when he returned to home, so, he went to the tailor shop of the accused at 7.00 p.m. and questioned the unlawful acts of the appellant committed in front of his house. To the shock and surprise the accused not only abused by uttering filthy words and also abused him by using his caste name. PW1 further deposed that after the occurrence he was taken to Government hospital by PW-5 where DSP came and inquired the occurrence with PW-1.

8. The facts narrated by PW-1 were reduced into writing by the Deputy Superintendent of Police in which he signed and the same was marked as Ex-P1. Thereafter the said complaint was registered as Crime No.22 of 2005.

9. PW2, the sister of PW 1 deposed that on 26.03.2005 at about 3.00 p.m. the accused Murugesan came to their house and had wordy quarrel with her father and mother in respect of hand loan borrowed by her brother. In this regard, the accused abused her father by using their caste name. When the said atrocity of accused was questioned by PW2, the accused tear the blouse worn by PW2. Thereafter PW2 informed the above said occurrence at 6.30 p.m. when her brother came to the house. Thereupon her brother along with Masthri Peter, PW5 went to the tailor shop of the accused. She further deposed that at 7.30 p.m. her brother PW1 came to the house with bleeding on his head and his middle finger was also bitten by the accused and hence his brother was taken to Erode Government Hospital along with Peter and Sengotaiyan.

10.PW3, who is the father of PW1 corroborated the evidence of PW1 and PW4 who is the mother of PW1 also corroborated the evidence of PW1 and PW2.

11.PW5 Peter who is the friend of Pw 1 deposed that on 26.03.2005 he accompanied with PW1 to the tailor shop of the accused where the accused attacked PW1 with brick on the back side of the head and also bitten the middle finger of the accused.

12.It is seen from the records that PW1 is the son of PW3 and PW4 and PW2 is the sister of Pw1 and daughter of PW3 and PW4. Admittedly in this case, according to PW2 and PW3 there was an occurrence taken place on 26.03.2005 at 3.30 p.m. and in the said occurrence the accused also involved and subsequently after PW1 came to the house, the above said incident was informed. However there was no complaint by PW2 to PW4 for the first incident said to have taken place. Further, it is quite astonishing to note here that the said incident has not even been mentioned in Ex-P1 complaint. The Learned Counsel for the appellant would submit that if really an incident as alleged by the parents and sister of Pw1 had taken place at 3.30 p.m. in front of their house and in which the accused is said to have molested PW-2 by tearing her blouse, either they would have lodged a complaint to the respondent police for the first incident stated above or the same would have been mentioned in the complaint for the subsequent alleged occurrence. Hence according to the Learned Counsel for the appellant, the case of the prosecution could be a false as the prosecution has not proved the genesis of the case. More further has also adds if at all such an occurrence was committed, the same would have been mentioned in the complaint. Therefore, according to the learned counsel for the appellant, it is the fit case that this Court may interfere in the findings of the learned trial Court and hence the appellant is entitled to be acquitted by giving him benefit of doubt.

13.Per contra, the learned Government Advocate (Criminal Side) would submit that the prosecution has clearly proved the occurrence by examining the witnesses appropriately. He also adds further that the failure of the PW-2 to file a separate complaint about the previous occurrence would not affect the case of the prosecution in any manner as it is the case of humiliation and utterance in the name of caste. Apart from that he also pointed out the learned trial Court has correctly recorded the conviction by legally appreciating the evidence

available, which needs no interference. Therefore, he prays to dismiss the appeal filed by the appellant.

14.I heard Mr.V.Balamurugane, learned counsel for the petitioner and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and the materials available on records are perused.

15.It is the prosecution case that the genesis of the occurrence is humiliation and molestation of the prosecution witnesses that is the parents and sister of the Defacto-complainant by the appellant in the afternoon at the residence of the parents of the Defacto-complainant. It would be natural human contact to mention the genesis of the case, in fact it would be motive of the subsequent occurrence for which the instant case is registered.

16.Considering the above said argument advanced by the appellant Counsel this Court is of the view that the case of prosecution creates serious doubts in the mind of this Court.

17.Further, the prosecution failed to give proper explanation for the arrest of the accused and for recovery especially when the accused had gone to the police station and lodged a complaint against the de-facto complainant, Pw1 on the same day of occurrence which was registered in Crime No.23 of 2005. The conclusion arrived at by the trial Court in rejecting the plea of the defence solely on the score that no further action taken by the accused against the order referring the above Crime No.23 of 2005 as mistake of fact is not based on merits and legally not sustainable.

18.PW5 Peter is the friend of PW1, who corroborated the evidence of PW1. PW6 one Abdul Salim said to be the neighbour tea-shop owner of the accused turned hostile. In this case admittedly PW1 to PW4 are blood relatives, though it is not a bar that blood relatives shall not be witnesses to speak about the occurrence, but the scrutiny of their evidence has not inspired credence in the mind of this Court. Therefore their evidence cannot be taken into consideration and the same is not trustworthy. The perusal of evidence of PW1 to PW5 shows certain contradiction. As per the evidence of PW1 the accused punched on his nose, whereas PW2, PW3, PW4 and PW5 deposed that the accused caused injury on the middle finger of PW1 by biting. In Ex-14 wound certificate it is mentioned that PW1 was accompanied by

his father Ayyavoo, whereas PW2 to PW5 deposed that PW1 was accompanied by PW5 Peter who is the friend of PW1. Further the perusal of Ex-P14 revealed that PW1 was stated to have assaulted by one known person. But all along PW1 to PW4 deposed that the accused Murugesan was known to them and they have borrowed money from him. In such a case, PW1 ought to have mentioned the name accused in Ex-P14 Wound Certificate. The non mentioning of the name of the accused in Ex-P14 is a fatal to the case of the prosecution.

19.The perusal of the materials and the totality of the case, in the considered opinion of this Court, the prosecution has not proved the case beyond reasonable doubt and the analysis of the evidence available has not inspired confidence in the mind of this Court, which form basis to consider the grounds raised by the appellant and the arguments advanced by the learned counsel for the appellant is having legal force.

20.In the result:

(a) this Criminal Appeal filed by the appellant is allowed by setting aside the conviction and sentence imposed in S.C.No.11 of 2006 dated 28.03.2006, on the file of the learned Principal District cum Sessions Court (Designated under Act 33/1989 Special Court) at Namakkal;

(b) the appellant/accused is acquitted from all the charges;

(c) the bail bond, if any, executed by him shall stand cancelled and the trial Court is directed to refund the fine amount, if any paid by the appellant/accused. सत्यमेव जयते

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District-cum-Sessions Judge
(Special Court),
Namakkal.

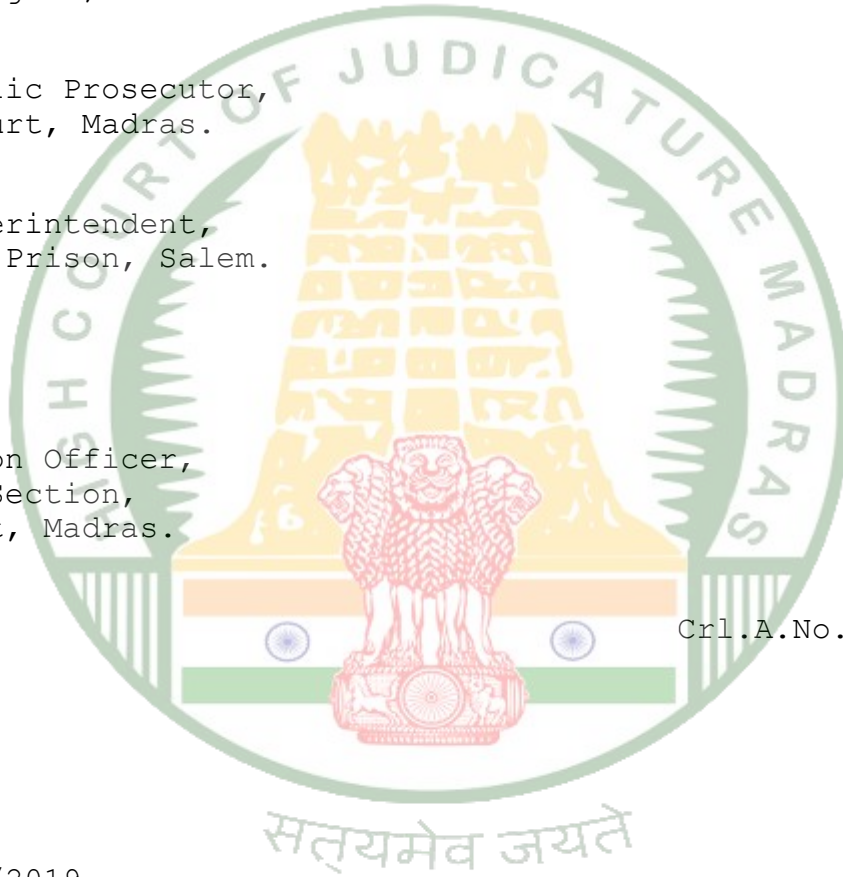
2.The Deputy Superintendent of Police,
Tiruchengode, Erode District.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison, Salem.

Copy to

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



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