

Bail Slip

K. Subramaniam

The above said Appellant/Accused was directed to be enlarged on bail as per order of this court dated 01.08.2011 made in CrI.M.P. No. 1/2011 in CrI.A.No.474 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

08.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.A.No.474 of 2011

K.Subramanian .. Appellant / Accused

versus

State rep. by
Deputy Superintendent of Police,
Sethiyathope Sub Division,
Cuddalore District. ..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the order of conviction and sentence dated 11.07.2011 made in S.C.No.159 of 2009 by the learned Principal Sessions Judge, Cuddalore.

For Appellant : Mr.V.Krishnamoorthy
For Respondent : Ms.T.P.Savitha
Government Advocate [Criminal Side]

J U D G M E N T

The appellant herein is the sole accused in S.C.No.159 of 2009 on the file of the learned Principal Sessions Judge, Cuddalore. He stood charged for the offences under Sections 341, 294(b), 506(i) of IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. By a judgment dated 11.07.2011, the trial court convicted the appellant/accused and sentenced as follows:

Section of law	Sentence
341 I.P.C.,	Rigorous imprisonment for one month.
294(b) I.P.C.,	Rigorous imprisonment for one month.
506(i) I.P.C.,	Rigorous imprisonment for two years.

Section of law	Sentence
3(1) (x) of S.C/S.T. Act	Rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for 15 days.

Challenging the conviction and sentence, the appellant is before this Court with the present Criminal Appeal.

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

2.1. On 31.03.2009, at about 6.15p.m., P.W.1 Sasikumar, P.W.2 Veerapandian and P.W.3 Sarangan were proceeding to Srimushnam Selva Meena Marriage Hall for attending Indian Communist Party meeting, while they were crossing the Balakrishnan xerox shop, the accused intercepted the P.W.1 and uttered the following derogatory remarks:

“ஒக்காளஓடி நில்லுடா? உறுக அப்பனும் சேல்வமும் தான் என்னை கட்சியை விட்டு விலக காரணமாக இருந்தாறுக அவறுகளை வேட்டாம விடமாட்குடன்”

2.2. P.W.1 confronted him that, if he had any grievance he would inform the same to the party high command and not to him. In reply, the accused uttered the following remarks:

“பற ஒக்காள ஓடி உறுகளுக்கு இவ்வளக திமிருனா படையாட்சி எனக்கு எவ்வளக திமிரு இருக்கும்”

2.3. These utterances occurred in the presence of a large gathering of the public and P.W.1 was greatly hurt by such derogatory remarks. Thereafter, P.W.1 pacified by his friends and after conclusion of the party meeting, he prepared a written complaint under Ex.P.1 before the Sub Inspector of Police, Srimushnam Police Station.

2.4. P.W.8 Selvaraj, the then Sub Inspector of Police, Srimushnam, on 31.03.2009, at about 20.15hours, received a complaint from P.W.1 and registered a case in Crime No.48 of 2009 under Sections 341, 294(b), 506(i) of IPC and Section 3(1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P.4 is the printed First Information Report. After registration of the case, he forwarded the First Information Report to the Court having jurisdiction. Thereafter, the copy of the First Information Report was placed before the P.W.9 for investigation.

2.5. P.W.9 Ramachandran, the then Deputy Superintendent of Police, Sethiyathoppu Police Station, on 31.03.2009, at about 08.15p.m., on information he went to the Srimushnam Police Station and received the copy of the First Information Report from P.W.8. He received the proceedings from the Superintendent of Police, Cuddalore for investigating the case, Ex.P.5 is the proceedings issued by the Superintendent of Police.

2.6. On the same day, at about 9.00p.m., he visited the scene of occurrence and in the presence of P.W.6 Shahjagan and one Thomas, he prepared an Observation Mahazar under Ex.P.2, further, he drawn a rough sketch under Ex.P.9. Thereafter, he examined the witnesses and recorded their statements.

2.7. In continuance of investigation, on 01.04.2009, at about 11.00a.m., in Adhivarahanallur Nal Road, he arrested the accused and made arrangements for sending him to the judicial custody, further he sent a requisition to the Tahsildar, Kattumannarkoil for issuing a Community Certificate to P.W.1 as well as to the accused.

2.8. P.W.7 Duraisamy, the then Tahsildar, Kattumannarkoil, on receipt of requisition given by the P.W.9 made an enquiry and issued Community Certificate certifying that P.W.1 Sasikumar belongs to Hindu Adidraavidar community and the accused belongs to Hindu Vanniyar community. The community certificate issued by the P.W.7 was marked as Ex.P.3.

2.9. On receipt of the Community Certificate issued by P.W.7, P.W.9 examined P.W.7 and recorded his statement. After concluding the investigation, P.W.9 came to the positive conclusion that the accused committed the offences under Sections 341, 294(b), 506(i) of IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and filed a charge sheet.

2.10. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment and the accused denied the same as false. In order to prove the case, on the side of prosecution, as many as 9 witnesses were examined as P.W.1 to P.W.9 and 6 documents were marked as Exs.P.1 to P.6.

2.11. Out of the said witnesses, P.W.1 is the victim in this case, he belongs to Hindu Adidraavidar community recognised as scheduled caste, he is a Youth Secretary in Indian Community Party, his father is a then Chairman in Panchayat Union. In the trial Court, he has stated that on 31.03.2009, at about 6.15p.m., there was a discussion meeting of the Indian Communist Party was held in Selva Meena Marriage Hall, in order to attend the said meeting at the time of occurrence, he along with P.W.2 and P.W.3 proceeded to the marriage hall, when they were near to the Balakrishnan Xerox Shop, the present accused intercepted and uttered the derogatory remarks. Further, he made wordy altercation with P.W.1 within the view of public, and also insulted the P.W.1 by saying his caste name. Thereafter, P.W.1 after attending the meeting lodged a complaint before the police.

2.12. P.W.2 Veerapandiyan and P.W.3 Sarangan are the

native of the same village, and they belongs to the Hindu Adidraavidar community. In the trial Court, they have stated about the occurrence in support of the evidence given by P.W.1 without any contradiction.

2.13. P.W.4 Gnanamani and P.W.5 Selvaraj are also the resident of the same village, and they belongs to Vanniyar community. In the trial court, they have stated about the occurrence as stated by P.W.1.

2.14. P.W.6 Shahjagan has stated that on 31.03.2009, at about 9.00p.m., P.W.9 came to the occurrence place and prepared the Observation Mahazar.

2.15. P.W.7 Duraisamy, the then Tahsildar has stated as while he was working as Tahsildar in Kattumannarkoil, based on the request made by P.W.9, he issued a community certificate to P.W.1 as well as to the accused.

2.16. P.W.8 and P.W.9 are the police officers have stated about the receipt of complaint, registration of the case, details of investigation and about the filing of final report.

2.17. The learned trial Judge with reference to the incriminating materials adduced by the prosecution questioned the accused under Section 313 Cr.P.C., for which, the accused denied the same as false. On the side of the accused, he examined himself as D.W.1, further, he exhibited 13 documents as D.1 to D.13.

2.18. Before the trial Court, when at the time of giving evidence as D.W.1 the accused has stated that, he is the party member in Indian Communist Party for the past 30 years, he has further stated before the date of occurrence, when the father of P.W.1 is a Union Chairman, he wrote a complaint against him saying that in distribution of the Colour T.V., in payment of wages to the workers employed in rural welfare scheme, there was a mismanagement and corruption was committed by P.W.1. In order to substantiate the above evidence, he has produced a copy of the complaint made against P.W.1 and other witnesses as Exs.D.1 to D.13. According to him, he was removed from the party before the occurrence. He has further stated in the corrupt practice of P.W.1, P.W.2 and P.W.3 participated and enriched themselves.

2.19. The learned trial Judge on perusal of the materials placed on record and on considering the arguments advanced by either side, convicted and sentenced the appellant/accused as stated supra. Challenging the same, the present appeal has been filed by the appellant.

3. I have heard the arguments advanced by Mr.V.Krishnamoorthy, learned counsel appearing for the appellant, Ms.T.P.Savitha, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

4. The learned counsel appearing for the appellant would contend that, since the accused levelled various allegations against P.W.1 to P.W.3, being the party members in order to take revenge, they lodged a false complaint against the accused. Further, the Investigating Officer in this case conducted the investigation against the provisions of law mandated in SC/ST (POA) Act, thereby, the entire proceedings concluded by the trial Court has to be set aside. He would further contend that there are lot of contradictions in the evidence of P.W.1 to P.W.4, who are the eye witness to the occurrence. Further, the Court below without considering all these materials convicted the appellant.

5. Per contra, learned Government Advocate [Criminal Side] appearing for the State would contend that, since the accused has been removed from the party, he thought that P.W.1 to P.W.3 are responsible for the said act, committed this offence. According to the learned Government Advocate, the investigation in this case has been completed within a parameters laid in law. Further, the trial Court has rightly convicted the accused and there is no reason to interfere with the well considered judgment of the trial Court.

6. I have considered the rival submissions made on either side.

7. Admittedly previous to the occurrence, the accused has been removed from the membership of the communist party. Before the occurrence, he made various allegations against P.W.1 to P.W.3, particularly, he sent a complaint to the various Government authorities (i.e.) [Ex.D.1 to Ex.D.13] saying that P.W.1 involved in the corrupt practice in administering local Government work, thereby, aggrieving over the same, there may be a chance for lodging false complaint against the accused. However, all are aware that the previous enmity is a double edged weapon. Accordingly, it is necessary to analyse the evidences adduced by the prosecution with much care and caution. In this regard, it is necessary to see the Rule 7 of The Scheduled Castes and Scheduled Tribes:(Prevention of Atrocities) Rules, 1995, which reads as follows:

"7(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 alongwith right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority, submit the report to the Superintendent of Police, who in turn shall immediately forward the report to the Director General of Police or Commissioner of Police of the State Government, and the officer in-charge of the concerned police station shall file the charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days (the period is inclusive of investigation and filing of charge-sheet)."

8. So according to the said Rule, if a case is registered under the provisions of SC/ST Act, it has to be investigated only by the Deputy Superintendent of Police having the past experience and sense of ability, further, he has to conclude the investigation within a period of 60 days and file a charge sheet. In this regard, in the trial Court, the proceedings issued to the P.W.9 for investigating this case has been marked as Ex.P.5, according to the contents of the said document, it was issued by the Superintendent of Police, Cuddalore, on 01.04.2009.

9. Now on going through the evidence of Investigating Officer, he has stated as on 31.10.2009 itself, he received the order passed by the Superintendent of Police, and took up the case for investigation. Moreover, he has stated on the same day via 31.10.2009 at about 9.00p.m., he went to the occurrence place and prepared an Observation Mahazar, further examined the witnesses and recorded their statements. Accordingly, before issuing the authorisation, he took up this case for investigation and completed the portion of investigation. Further in his evidence he did not say anything about the past experience and about the sense of ability. So without saying the specific evidence that he is having the past experience, this Court cannot hold that he is the competent person to conduct the investigation in a case registered under SC/ST Act.

10. Only on considering the gravity of offence, the legislatures enacted the said provision for penalising the person committed these type of offence but in this case, the

said object have not been complied by the Investigating Officer, particularly before getting authorisation, he completed the investigation, which is nothing but against the Rule 7 of SC/ST Rules. So, convicting the accused under Section 3(1)(x) of SC/ST Act is legally not sustainable.

11. In respect to the punishment under Section 506(i) of IPC, it is necessary to scrutinise the words uttered by the accused at the time of occurrence. On close scrutiny of the evidence given by P.W.1 to P.W.4, the accused did not make any life threat towards the P.W.1.

12. In an order passed in Crl.O.P.No.1039 of 1996, this Court has clearly held as follows:

"Part II of Section 506 I.P.C. is attracted if the criminal intimidation includes threat to cause death or grievous hurt. Mere outburst is not sufficient to hold that it would fall within the mischief of Section 506 I.P.C. In the instant case, the averment in the complaint and the statements in the depositions, if taken together, there are no allegations in the whole complaint that the petitioner ever made any attempt or did any act in pursuance of his alleged expression."

13. Now following the principle already laid, in this case without any overt act the words uttered due to anger will not amount to criminal intimidation. It could also be said that mere mens rea without any actus reus/overt act will not make it an offence under Section 506(i) or under Section 506(ii) of IPC. In the said circumstances, in this case also we cannot come to the conclusion that the accused committed an offence under Section 506(i) of IPC.

14. Upon Sections 341 and 294(b) of IPC, the evidence given by P.W.1 to P.W.4 is very clear and cogent, even though P.W.2 and P.W.3 belongs to the same community of P.W.1, according to the evidence given by P.W.4 and P.W.5, they belong to the community as of the accused but they had also supported the case of prosecution and gave evidence in the trial Court particularly about the abusive words used by the accused in the public place, so we cannot throw away the evidence given by P.W.4 and P.W.5 easily by stating that they supported the P.W.1 for other means. Furthermore, it is an admitted fact that the offence had happened in day hours in the public place and within the public view, moreover there is no necessity to the accused for come to the said place without any reasons. In otherwise, the cross examination of P.W.1 to P.W.4 did not impeach the credibility of chief examination given by P.W.1 to P.W.4. Accordingly, the evidence adduced by the P.W.1 to P.W.5 clearly

proved that the accused committed the offence under Sections 341 and 294(b) of IPC.

15. In the said circumstances, for the said offences, he was convicted and sentenced to undergo rigorous imprisonment for one month each, now on seeing the punishment provided to the said offence, a person, who committed the said offence may be convicted either imposing a fine or by imposing the sentence. In this regard, in order to confirm the sentence, it is necessary to see the mitigating circumstances of this case, in which the alleged offence had happened. It is an admitted fact, both the accused and the victim are belongs to the same village and previously they are the members of same political party and participated in the public welfare scheme, further, the accused is having the habit of questioning the mistakes committed by others. So considering the character and situation of the accused, charging imprisonment for the offence committed by the accused is excessive one and accordingly, I am of the considered opinion that for both the offences via Sections 341 and 294(b) of IPC, he should be convicted by imposing a fine only.

16. In the light of the above discussion, the appeal filed by the appellant is allowed. The judgment dated 11.07.2011 of the learned Principal Sessions Judge, Cuddalore in S.C.No.159 of 2009 is modified and the appellant / accused is convicted under Sections 341 and 294(b) of IPC alone and imposed a fine of Rs.500/- each, in default to undergo one week simple imprisonment for each offences. In respect of offences under Section 3(1)(x) of SC/ST Act and Section 506(i) of IPC, the conviction and sentence awarded by the Trial Court are set aside. Fine amount paid by them already is to be adjusted for the fine now imposed.

s/d-

Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

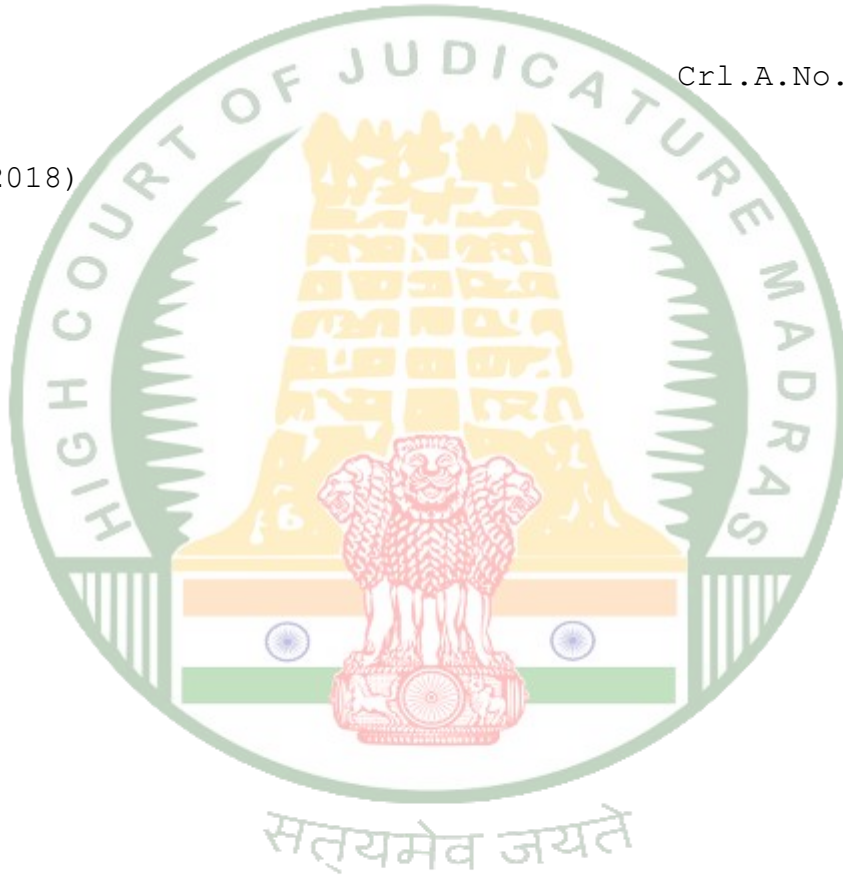
sri
To

1. The Principal Sessions Judge,
Cuddalore.
2. The Deputy Superintendent of Police,
Government of Tamil Nadu,
Sethiyathope Sub Division,
Cuddalore District.

3. The Judicial Magistrate No.2
Virudhachalam.
4. The Chief Judicial Magistrate
Cuddalore.
- 5.The Section Officer,
Criminal Section
Madras High Court,
Chennai.

Crl.A.No.474 of 2011

KS (CO)
SP(28/11/2018)



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