

Bail Slip

Crl.A.No.80/2011

The Appellant/Accused, namely D.S.Saravanan S/o. Chokkalingam (in S.C.No.52/2008 dated 05/01/2011 on the file of the Principal Sessions District and Sessions Judge, Dharmapuri) was directed to be released on bail as per order of this Court dated 04/02/2011 made Crl.MP No.1 of 2011 in Crl.A. No. 80 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 04.12.2018

CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.80 of 2011
and CRL.R.C.No.890 of 2012

CRL.A.No.80 of 2011

D.S.Saravanan

.. Appellant/Accused

Vs

State rep. by
The Deputy Superintendent of Police,
Dharmapuri Sub Division,
Dharmapuri.
(Crime No.1055 of 2007

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.
praying to set aside the judgment of conviction and sentence
passed by the Principal District and Sessions Judge, Dharmapuri
in S.C.No.52 of 2008 dated 05.01.2011.

For Appellant : Mr.C.R.Malarvannan

For Respondent : Mrs.P.Kritika Kamal,
GA (Crl. Side)

CRL.R.C.No.890 of 2012

P.Paranthama Kannan

.. Petitioner/PW1

Vs

1.T.S.Saravanan

.. Respondent-1/Accused

2.The Superintendent of Police,
Dharmapuri Division,
Dharmapuri.

.. Respondents-2/Complainant

Criminal Revision case filed under Section 397 r/w 401 of Cr.P.C. praying to enhance the punishment to the 1st respondent in S.C.No.52 of 2008 dated 05.01.2011 passed by the Principal District and Sessions Judge, Dharmapuri.

For Petitioner : Mr.S.Sathia Chandran

For R1 : Mr.C.R.Malarvannan

For R2 : Mrs.P.Kritika Kamal,
GA (Crl. Side)

C O M M O N J U D G M E N T

Inasmuch as both Criminal Appeal and Criminal Revision Petition emerge from one and the same judgment of the trial Court, these cases are considered and decided by this common judgment.

2.It is the case of the prosecution that Parandamakannan (PW1) was the Executive Officer, Hindu Religious and Charitable Endowments Department (for brevity "the Department") of Kumarasampettai Sri Siva Subramanya Swamy Temple, with his office in one of the rooms of a marriage hall attached to the said temple; the appellant was in occupation of a plot in Door No.24/37 Theerthagiri Street, Dharmapuri belonging to the said temple, on which, his family had built a house; on coming to know that he was doing major repair works without the permission of the Department, Parandamakannan (PW1), along with Selvaraj (PW2) and Kandasamy (PW5), went to the spot and found construction activities going on there; hence, a complaint was lodged in the local Police Station by the officials, based on which, an enquiry was conducted by the Police on 30.09.2007, in which, the appellant gave an undertaking that he will stop further construction activities.

3.However, on coming to know that he was continuing the construction work, Parandamakannan (PW1) and Selvaraj (PW2) went to the spot on 02.10.2007 and told the construction workers to stop the work; thereafter, Parandamakannan (PW1) and Selvaraj (PW2) came to their office in the marriage hall; around 11.00 a.m., the appellant came to the office and questioned Parandamakannan (PW1) and abused him in choicest epithets including referring to his caste, Parandamakannan (PW1) being a

Dalit; he pulled Parandamakannan (PW1) by his shirt collar, dragged him out of his seat and punched him on his chest; Selvaraj (PW2) and Vadivel (PW3) intervened and rescued Parandamakannan (PW1).

4. On the complaint (Ex.P2), Krishnan (PW10), Sub Inspector of Police, registered a case in Crime No.1055 of 2007 on 02.10.2007 and prepared the printed FIR (Ex.P7). Mr.Vijayaragavan (PW11), Deputy Superintendent of Police took up the investigation of case, examined the witnesses, obtained the community certificates of Parandamakannan (PW1) and the appellant, completed the investigation and filed final report in P.R.C.No.7 of 2008 before the Judicial Magistrate No.I, Dharmapuri, for the offences under Section 332 IPC and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989 (for brevity "the SC/ST Act").

5. On the appearance of the appellant, the provisions under Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Dharmapuri and made over to the I Additional District and Sessions Court, Dharmapuri, for trial. The trial Court framed charges under Section 332 IPC and Section 3(1)(x) of the SC/ST Act and when the appellant was questioned, he pleaded 'not guilty'.

6. To prove the charges, the prosecution examined 11 witnesses and marked 9 exhibits. On behalf of the appellant, 6 exhibits were marked. When the appellant was questioned about the incriminating circumstances appearing against him under Section 313 Cr.P.C, he denied the same. No witness was examined on behalf of the appellant.

7. The trial Court, after considering the evidence on record and hearing either side, by judgment dated 05.01.2011, has convicted the appellant for the offence under Section 332 IPC and Section 3(1)(x) of the SC/ST Act and has sentenced him as follows :

Provision under which convicted	Sentence
Under Section 332 IPC	fine of Rs.1,000/- in default to undergo three months simple imprisonment
Under Section 3(1)(x) of the SC/ST Act	two years rigorous imprisonment and fine of Rs.1,000/- in default to undergo six months simple imprisonment

8. Challenging the conviction and sentence, the appellant is before this Court in Cr1.A.No.80 of 2011. Parandamakannan (PW1)

has filed Crl.R.C.No.890 of 2012, challenging the quantum of sentence imposed by the trial Court.

9.Heard Mr.C.R.Malarvannan, learned counsel appearing for the appellant, Mrs.Krithika Kamal, learned Government Advocate (Crl.Side) and Mr. S.Sathia Chandran, learned counsel for Parandamakannan (de facto complainant/PW1).

10.Before adverting to the disputed facts, it may be appropriate to catalogue the undisputed facts, which are as under:

a)Parandamakannan (PW1) was a public servant, working as Executive Officer at Sri Siva Subramanya Swamy Temple, Kumarasampettai at the relevant point of time.

b)Parandamakannan (PW1) belongs to Adi Dravidar community, which is a Scheduled Caste within the meaning of the SC/ST Act vide Ex.P4 issued by Murugesan (PW7), Tahsildhar.

c)Selvaraj (PW2) was working as a Manager in Sri Siva Subramanya Swamy Temple under Parandamakannan (PW1) at the relevant point of time.

d)The appellant belongs to Sengunthar community, which is not a Scheduled Caste vide Ex.P6 issued by Elangovan (PW9), Deputy Tahsildhar; the appellant was in occupation of the temple land in plot No.24/37, Theerthagiri Street and had his residence there.

11.Parandamakannan (PW1), in his evidence, has stated that in the year 2007, when he was the Executive Officer of Sri Siva Subramanya Swamy Temple, the appellant was residing at No.24/37 Theerthagiri Street, Dharmapuri, in the temple land; the appellant was in occupation of the land belonging to the temple; the appellant was undertaking repair works without the permission of the Department; on coming to know of it, as Executive Officer, he informed him not to carry on with any work; on 02.10.2007, he went to the spot and instructed the workers to stop the work; thereafter, he came to his office located in the Sengundhar Marriage Hall around 12.30 p.m.; the appellant came to his office and spoke the following words:

"Who are you to stop the work in my house ? This property belongs to Mudaliyar community. Therefore, I need not get permission from anybody and I can do anything with the property. Who are you to question that ? You Paraya dog. It is an insult for us to allow you people to administer the temple and property. You people are destroying the temples. By allowing the Paraya dogs like you to manage temples, temples are getting spoiled. Neither you nor your Department people can do anything to me. You cannot even take eviction proceedings against me, because, I

will make the files disappear. The properties belong to Mudaliyar Community and you have to listen to us. If you try to evict us, our community people will not allow you, even to cross the Village."

12.Parandamakannan (PW1) further deposed that the appellant pulled him by his shirt collar and punched him on his chest. At that time, Selvaraj (PW2), who is the Manager, nearby, came to his rescue and separated them. The appellant did not stop with that and abused Selvaraj (PW2) for coming to his rescue and took the files from the table and threw them. The incident left Parandamakannan (PW1) in shock and after gaining normalcy, he informed his superiors, after which, he went to the office of the Superintendent of Police and lodged a complaint (Ex.P1). On the directions of the Superintendent of Police, he went to the Police Station and gave the complaint (Ex.P2), based on which, FIR was registered, as stated above.

13.In the cross-examination, Parandamakannan (PW1) admitted that the appellant had filed a Writ Petition, challenging the appointment of four other persons as Trustees and the said Writ Petition was allowed. The appellant suggested to Parandamakannan (PW1) that he had swindled Rs.17,500/- in another temple and that, there are complaints against him and therefore, he was transferred from one temple to the other, which suggestion Parandamakannan (PW1) denied. Parandamakannan (PW1) admitted that he has a brother by name Sambunithi, who is residing in a property belonging to the temple. It was suggested that Sambunithi was paying very low rent to the temple and when the appellant questioned the same, a false case has been foisted, which suggestion Parandamakannan (PW1) denied. To the suggestion that 02.10.2007 being a Public Holiday, he would not have gone to the office, Parandamakannan (PW1) denied the same.

14.To a specific question as to whether, a tenant can make improvements in the temple property on his own accord, Parandamakannan (PW1) stated that all improvements can be done only with the permission of the Department. It was not suggested to Parandamakannan (PW1) that the appellant was not making any improvements in the property nor was it suggested that the improvements were being made with the permission of the Department. In the cross-examination, Parandamakannan (PW1) was asked about the official status of Selvaraj (PW2) and it was suggested that Selvaraj (PW2) was not a permanent employee and that, he was receiving the salary of a permanent employee, which was questioned by the appellant and so, a false case has been foisted, to which, Parandamakannan (PW1) replied in the negative.

15.He has further stated in the cross-examination that he was seated in the room facing east and the appellant came from the northern direction, pulled him out by his shirt collar and punched him. He has specifically stated in the cross-examination that after the incident, he was shell shocked and stressed and was sitting in the office for two hours. His cross-examination runs to six typed pages and nothing substantial has been elicited to create a doubt on his testimony.

16.Selvaraj (PW2), the Manager of the temple, in his chief-examination has stated that on 28.09.2007, he went along with Parandamakannan (PW1) and Kandasamy (PW5) to the house of the appellant at Door No.24/37, Theerthagiri Street and found repair work being carried on there; hence, they lodged a complaint to the Police and the Police called the appellant for enquiry on 13.09.2007; in the enquiry, the appellant agreed to stop the repair activities; on 02.10.2007, they again went to the house of the appellant and told the workers to stop the construction work and returned to their office; around 11.00 a.m., the appellant came there and started questioning Parandamakannan (PW1) as to how, he could ask his workers to stop the work.

17.Selvaraj (PW2) clearly deposed about the abusive words used by the appellant referring to the caste of Parandamakannan (PW1). In fact, Selvaraj (PW2) has stated that the appellant abused Parandamakannan (PW1) by saying "What right the low caste people like you have to administer temples and manage temple properties?" Selvaraj (PW2) has also deposed that the appellant told Parandamakannan (PW1) that he (appellant) cannot be evicted and that, he (appellant) will make the eviction files go missing. When Parandamakannan (PW1) told the appellant that he will act only in accordance with law, the appellant stated, "You Paraya dog, how dare you retort"; saying so, the appellant punched Parandamakannan (PW1) on his chest; when Selvaraj (PW2) intervened, the appellant abused him also by saying, "Are you fit to be an upper caste"; saying so, the appellant threw the files on the table and pushed Parandamakannan (PW1) by saying the low caste people have no place in their community temple.

18.Selvaraj (PW2) has further deposed that after the incident, Parandamakannan (PW1) was dazed and was sitting in the office for sometime. Parandamakannan (PW1) informed his superiors about the incident and thereafter, Parandamakannan (PW1) along with Selvaraj (PW2) went to the office of the Superintendent of Police and lodged a complaint. On the directions of the Superintendent of Police, they went to B-1 Police Station and lodged another complaint (Ex.P2). In the cross-examination, it was suggested to Selvaraj (PW2) that he was not a permanent employee in the Department; however, he was

drawing the salary of a permanent employee with the help of Parandamakannan (PW1) and when this was questioned by the appellant, he turned against him, which suggestion, Selvaraj (PW2) denied. In the cross-examination, Selvaraj (PW2) admitted that the appellant had given a complaint against him, in B-1 Police Station, adding that, the said complaint was closed by the Police as false.

19.The appellant had marked the FIR as Ex.D4. On perusal of the FIR, it is seen that on the complaint given by the appellant, a case was registered on 26.12.2005 under Section 341, 323 and 294(b) IPC, against four persons including Selvaraj (PW2). Beyond marking of the FIR, no other document like charge sheet, etc. has been marked to show that Selvaraj (PW2) was facing prosecution in that case. Except making routine suggestions that Selvaraj (PW2) was deposing falsely in favour of Parandamakannan (PW1), his superior official, the defence was not able to make any dent in the testimony of Selvaraj (PW2).

20.Vadivel (PW3), in his chief-examination, has stated that he was working in Palacode Sugar Mills and he carried a letter from the Executive Officer of Jalagandeswarar temple to be given to Parandamakannan (PW1), to hand over which, he came to the office of Parandamakannan (PW1) on 02.10.2007; he handed over the letter to Parandamakannan (PW1); while Parandamakannan (PW1) was reading the letter, the appellant came there and started abusing Parandamakannan (PW1) by referring to his caste.

21.Vadivel (PW3) has clearly stated that when the appellant entered the office of Parandamakannan (PW1) and questioned as to what power he has got to stop his workers from proceeding with the work and when Parandamakannan (PW1) stated that he was only performing his duty, the appellant said that low caste fellows are now administering the temples of caste Hindus and that is why, there is so much of trouble; saying so, the appellant punched Parandamakannan (PW1) on his chest. Selvaraj (PW2) and Vadivel (PW3) intervened and separated them. The appellant took the files from the table and threw them saying that, he will finish him (Parandamakannan/PW1) off, if he continues to do things like this. In the cross-examination, Vadivel (PW3) has stated that he knew Parandamakannan (PW1) as Parandamakannan (PW1) would come to Jalagandeswarar temple, which is at Kaveripattinam Agraharam. It was suggested to him that he was deposing falsely in favour of the prosecution to help Parandamakannan (PW1), which suggestion, he denied.

22.Kandasamy (PW5), in his evidence, has stated that he was working as Clerk in that temple at the relevant point of time; on 28.09.2007, he went along with Parandamakannan (PW1) and Selvaraj (PW2) to the house of the appellant and found that repair works were going on; hence, they asked the workers to

stop the work; on 02.10.2007, while he was going to oversee the annadanam activities in the temple, he saw the appellant near the main gate of the temple office walking inside hurriedly asking Kandasamy (PW5) whether the Executive Officer was there in the office; when Kandasamy (PW5) said in the affirmative, the appellant went inside the office and Kandasamy (PW5) continued his work in the temple. In the cross-examination, it was suggested to him that he was more than 58 years old and that, he should have been superannuated, but, because of the benevolence of Parandamakannan (PW1), he was retained in service and as a token of gratitude, he has deposed falsely supporting Parandamakannan (PW1), which suggestion, Kandasamy (PW5) denied.

23.Mr.Malarvannan, learned counsel appearing for the appellant submitted that there are several contradictions in the testimony of the witnesses, thereby, casting a serious doubt in the prosecution case. He submitted that the incident had taken place at 12.30 noon; but, the complaint has been lodged only at 11.00 in the night, on that day and this delay has not been explained. He contended that the defence have marked Ex.D1 to Ex.D6 to show that the appellant had been questioning the activities of Parandamakannan (PW1), on account of which, the present case has been foisted.

24.Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the appellant.

25.This Court gave its anxious consideration to the rival submissions.

26.It is true that FIR in this case was registered only on 02.10.2007 at 11.00 p.m. and that by itself cannot lead to the inference that a false case has been foisted on the appellant. Admittedly, Parandamakannan (PW1) is a Dalit and the appellant is a caste Hindu. It is the case of Parandamakannan (PW1) that he, along with Selvaraj (PW2) and Kandasamy (PW5), had prevented the appellant from proceeding with the repair works in the temple land, as he had not obtained prior permission of the Department, aggrieved by which, the appellant came to his office around 12.30 p.m. on 02.10.2007 and abused him indiscriminately by referring to his caste. The appellant not only abused Parandamakannan (PW1), but also pulled him by his shirt collar and punched him.

27.This incident could have had a demoralizing and stunning impact on the body and mind of the Dalit officer, which cannot be explained in words. It would have taken a very long time for Parandamakannan (PW1) to recover from the shock. Parandamakannan (PW1) was abused in the presence of his subordinate Selvaraj (PW2) and Vadivel (PW3), a visitor.

28.Mr.Malarvannan submitted that Parandamakannan (PW1), in his examination-in-chief, has not stated that Vadivel (PW3) was present at the spot. It is true that Parandamakannan (PW1) had not said so, but, nevertheless, Selvaraj (PW2) in his examination has stated about the presence of Vadivel (PW3) in the office, at the time of the incident. It must be borne in mind that both Selvaraj (PW2) and Vadivel (PW3) are not Dalits, but caste Hindus. In fact, Selvaraj (PW2) and the appellant are from the same caste. Selvaraj (PW2) and Vadivel (PW3) did not turn hostile, but supported the prosecution case in toto, for which, they surely deserve commendation. From a reading of the evidence of Parandamakannan (PW1), Selvaraj (PW2) and Vadivel (PW3), this Court does not find any serious contradiction, with regard to the substratum of the allegations. Though all the three have not repeated the abuses hurled by the appellant verbatim, they have, in their own words, stated the substance of the abuses. Human mind is not a tape recording machine. We work on episodic memory. Had all the three given parrot like testimony, then, that can arouse suspicion in the mind of this Court. Whereas, a reading of their evidence shows that they were deposing naturally about the facts, perceived by them. In the opinion of this Court, de hors the evidence of Selvaraj (PW2) and Vadivel (PW3), the testimony of Parandamakannan (PW1), the victim of the crime, proprio vigore sounds credible and is worthy of acceptance.

29.Mr.Malarvannan contended that, to attract the provisions of Section 3(x)(i) of the SC/ST Act, the incident should have occurred in public view and that element is missing in this case. This Court is unable to persuade itself to agree with the said submission because, the incident had taken place in the office of Parandamakannan (PW1), which is a public office, accessible to public and incidentally, Vadivel (PW3), a visitor was present then.

30.Mr.Malarvannan contended that immediately after the incident, Parandamakannan (PW1) did not go for medical treatment and that, he was examined by Dr.Ramalingam (PW8) only at 11.10 p.m. on 02.10.2007 and this improbabilises his version.

31.This Court is unable to find merit in the submission because, it is not the case of Parandamakannan (PW1) that he was assaulted with weapons for him to be taken to the hospital for immediate treatment. It is his case that the appellant abused him, pulled him by his shirt collar out of his seat and punched him on the chest. More than physical attack, the caste abuse hurled by the appellant had traumatized Parandamakannan (PW1). Parandamakannan (PW1) had informed his superiors, went to the office of the Superintendent of Police and on his directions, went to the local Police Station and lodged the complaint. When Parandamakannan (PW1) complained of uneasiness in the Police

Station, he was referred to the hospital for treatment. The chain of events about which, evidence has been given by Parandamakannan (PW1), Selvaraj (PW2) and Vadivel (PW3) are so convincing that the failure of Parandamakannan (PW1) to go the Police Station immediately or to go to the doctor for treatment, cannot be said to be fatal to the case of the prosecution.

32.The submission of the defence that on 02.10.2007 being a public holiday, Parandamakannan (PW1) and Selvaraj (PW2) would not have gone to office, deserves to be stated only to be rejected because, no law prevents a public servant from working on a public holiday. In fact, it is common knowledge that public holidays provide a very congenial atmosphere for committed public servants to work without disturbance, which they may not be able to get on working days.

33.Coming to the question of sentence, strangely, the trial Court has not awarded sufficient punishment to the appellant for the offence under Section 332 IPC. This aspect has been focused by Mr.Sathia Chandran, learned counsel appearing for Parandamakannan (PW1) in CrI.R.C.No.890 of 2012.

34.Mr.Malarvannan submitted that the incident had taken place in the year 2007 and thereafter, much water has flown under the bridge in the life of the appellant, inasmuch as the appellant remains a bachelor and is required to take care of his aged mother. Hence, the learned counsel pleaded for maintaining the sentence at least. Bearing in mind this submission, this Court is of the view that it may not be appropriate to enhance the sentence, at this distant point of time.

In the result, the Criminal Revision Petition stands dismissed and the Criminal Appeal also stands dismissed. The conviction and sentence imposed by the trial Court in S.C.No.52 of 2008 stand confirmed. The trial Court is directed to take the appellant into custody immediately for undergoing the sentence.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Dharmapuri.

2.Do - Thro' the Chief Judicial Magistrate, Dharmapuri.

- 3.The Additional Sessions Judge,
Dharmapuri.
4. The Principal District and Sessions Judge,
Dharmapuri.
- 5.The Deputy Superintendent of Police,
Dharmapuri Sub Division,
Dharmapuri.
- 6.The Director General of Police,
Dharmapuri.
- 7.The Superintendent of Police,
Dharmapuri Division,
Dharmapuri.
- 8.The Public Prosecutor,
High Court, Madras.
- 9.The Section Officer,
Criminal Section,
High Court, Madras 600 104.

+1cc to Mr.N.Mohideen Basha, Advocate, S.R.No.83388

+1cc to Mr.S.Sathiachandran, Advocate, S.R.No.83316 (05/02/2019)

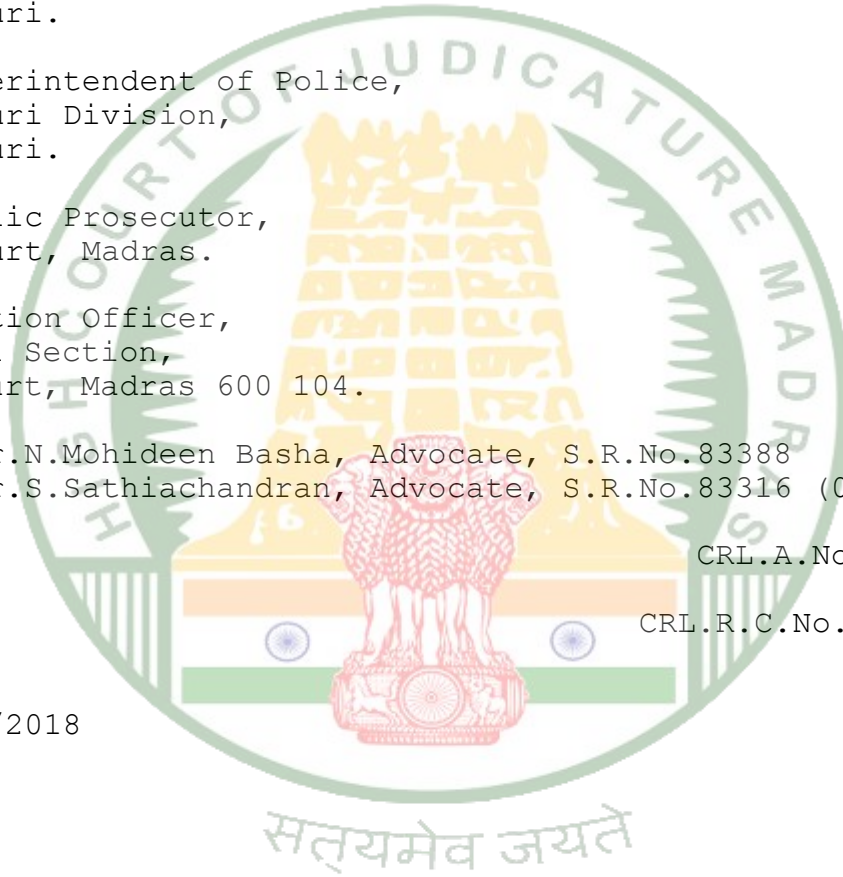
CRL.A.No.80 of 2011

AND

CRL.R.C.No.890 of 2012

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