

Bail Slip

The Appellant/Accused namely Rajendran S/O Annakaraipillas was released on bail vide order dated:11/10/2013 made in CRL.MP.No.1/13 in CRL.A.No.683 /2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2018

Pronounced on : 30.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.683 of 2013

and

M.P.No.1 of 2013

Rajendran

...Appellant/Accused.No.1

Vs.

State rep. By
The Deputy Superintendent of Police,
Kallakurichi Sub Division,
Villupuram District.
(Crime No.122 of 2009)

...Respondent/Complainant

The Criminal Appeal is filed under Section 378 of Code of Criminal Procedure against the judgment of conviction and sentences imposed by the learned Special Judge (Principal Sessions Judge) Villupuram, in S.C. No.161 of 2010, dated 27.09.2013.

For Appellant : Mr.B. Vasudevan

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

J U D G M E N T

This Criminal Appeal has been filed against the judgment of conviction and sentences imposed by the learned Special Judge (Principal Sessions Judge) Villupuram in S.C. No.161 of 2010, dated 27.09.2013.

2. The case of the prosecution is that the appellant belongs to Vellazhapilla Community. The defacto complainant belongs to Adi-Dravidar Community. There was a long dispute regarding common ridge running between the lands of both parties. The

Surveyor measured both their lands and layed survey stones and thereafter, on 24.07.2009 at about 8.30 a.m., the appellant with the assistance of some other persons put up a ridge over the land of the defacto complainant and when the defacto complainant objected the same, the appellant abused her in filthy language referring her caste and the appellant assaulted her with wooden handle of spade on the left shoulder and left hand elbow of her mother and when P.W.1 intervened, the appellant abused her and further pulled her hair and pushed her down to the ground and the blouse of the P.W.1 was torn and one Shenbagam and one Sanniyasi intervened and pacified both the parties. The husband of the defacto complainant admitted her to Government Hospital at Kallakurichi and about 2.00 P.M., Keezhkuppam Police came to the hospital and recorded the complaint in the hospital. Thereafter, registered the case and further investigated into the matter.

3. The Superintendent of Police, Kallakurichi Sub Division, Kallkurichi, took up the case for investigation and filed final report before the learned Judicial Magistrate, Kallakurichi in P.R.C.No.21 of 2010 and after completing the legal formalities, the learned Judicial Magistrate came to the conclusion that the offence alleged under Section 3(1)(X) of SC/ST (POA) Act was exclusively triable by the Court of Sessions, he committed the case to the Court of Sessions. The learned Sessions Judge taken the case on file in S.C.No.161 of 2010 and framed the charges under Sections 354 (2 counts), 324 (2 counts) 506(ii) of IPC and 3(1)(X) of SC/ST (POA) Act 1989 against the appellant/first accused and the appellant denied the charges.

4. Before the trial Court, in order to prove the case, prosecution had examined P.W.1 to P.W.15 and marked Ex.P1 to Ex.P14 and M.O.1 and M.O.2 were produced.

5. The learned Sessions Judge, after considering the entire materials and also arguments of either side, acquitted the other accused and convicted the appellant and sentenced him to undergo six months rigorous imprisonment for each count for offence under Section 324 (2 counts) of IPC and to pay a fine of Rs.500/- for each count, in default, to undergo one month rigorous imprisonment and also to undergo rigorous imprisonment for six month for the offence under Section 3(1)(X) of SC/ST (Prevention of Atrocities) Act 1989 and set off is allowed under Section 428 Cr.P.C. and the substantive sentence shall run concurrently.

6. Aggrieved against the judgment of conviction and sentence dated 27.09.2013, the accused has preferred this criminal appeal before this Court. Whereas neither the prosecution or the defacto complainant has filed an appeal against the acquittal of

the other accused and acquittal of this appellant for other offences.

7. The appellant has filed the present appeal for the following grounds:

"1. The Court below failed to see that P.W.1 has admitted in her cross examination that she does not know the contents of Ex.P.1, and she has also admitted that she signed in a paper written by police.

2. The Court below failed to see that P.W.13, the Investigating Officer has not conducted any investigation on the counter complaint given by the accused though he knows about it even at the time of registration of the case.

3. The Court below failed to see that the accused are injured in this case and the said injuries were not explained by the prosecution."

8. The learned counsel for the appellant would submit that there is a dispute between the appellant and P.W.1 with reference to the boundaries established in the ridge running between both the lands and even the appellant sustained injuries. At the time of the occurrence, the injuries sustained by appellant has not been properly explained by the prosecution. P.W.1 foisted a false case and a case was registered against the defacto complainant. A complaint was also made by the appellant, but, the case was not registered by the prosecution that the appellant also sustained injury. The officer, who investigated the case is not the competent person to investigate this case. There is a motive between the appellant and the defacto complainant. Civil case is pending. Therefore, they adopted the other methods to take vengeance against the appellant. The trial Court failed to consider that the superintendent of Police, Kallakurichi Sub Division has not properly investigated the matter and filed the correct report that all the witnesses belong to the same community. They are all interested witnesses and the prosecution has not proved the case beyond reasonable doubt. The case of the prosecutions are fully in favour of the accused. Taking into consideration that the learned Sessions Judge had rightly appreciated the evidence against the other accused and acquitted them, the same benefits of doubt ought to have been extended to the appellant also. Therefore, the judgment of the learned Sessions Judge warrants interference.

9. The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that they received the information from the Government Hospital, Kallakurichi on

24.07.2009. P.W.14 went to the hospital and examined P.W.1 and recorded the complaint in writing and they filed the case and hand over the case to the P.W.5/Superintendent of Police, Kallakurichi Sub Division. They started to investigate the case and after investigation, filed the charge sheet against the appellant and other accused under Section 354 (2 counts), 324 (2 counts) 506(ii) of IPC and 3(1)(X) of SC/ST (POA) Act 1989 before the learned Judicial Magistrate, Kallakurichi.

10. On the side of the prosecution, the prosecution examined as many as 15 witnesses P.W.1 to P.W.15 and exhibited 14 documents viz., Ex.P.1 to Ex.P.14. On the side of the accused no witness has been examined and produced Ex.D1 to Ex.D3 and the prosecution has marked M.O.1 and M.O.2

11. P.W.1/defacto complainant, who belongs to Adi dravidar community and she is having an adjacent land to the appellant and there was long dispute over the ridge forms to the boundary of the lands of the appellant and the defacto complainant. The defacto complainant has categorically stated that the appellant had obliterated the common ridge running between the defacto complainant and the land of the appellant. The surveyor measured both lands and layed the survey stones. Thereafter, on 24.07.2009 at about 8.30 A.M., the appellant with the assistance of some other persons put up a ridge over the land of the P.W.1 and when the P.W.1 objected to the same, the appellant abused her with filthy language and referring her caste and the appellant assaulted with wooden log on the left shoulder and left elbow of her mother and P.W.1 intervened, the appellant abused her and pulled her hair and pushed her down to the ground and torn her blouse. One Shenbagam and Sanniyasi intervened and pacified both the parties and the husband of the P.W.1 admitted her to the Government Hospital. The Keezhkuppam police came to the hospital and recorded her statement and the same was treated as complaint. The said complaint was marked as Ex.P.1 and P.W.1 admitted the signature found in the complaint and the recitals made in the Ex.P.1 and also identified the appellant and other accused. Nothing has shattered the case of the prosecution.

12. Then, P.W.2 Karupayee was eyewitness and she was examined by the respondent police and she was present at the time of the occurrence. She corroborated the evidence of P.W.1.

13. P.W.3 Paramasivam is one of the eyewitness and he was also present at the time of the occurrence. There was a dispute between P.W.1 and the appellant over the ridge. He supported the case of the prosecution and corroborated the evidence of P.W.1 and P.W.2.

14. One Duraisamy was examined as P.W.4 and he has spoken that after hearing the noise from the place of occurrence and he went there. At that time, the appellant uttered to the caste of the P.W.1 and also other accused stated that by referring her caste and scolded in filthy language and also the appellant assaulted P.W.2 with the handle of spade on the left shoulder and corroborated evidence of P.W.5.

15. One Sanniyasi/P.W.5 has spoken about the occurrence that there was a dispute over the ridge running between the lands of the appellant and P.W.1. The appellant prior to the occurrence, the Surveyor inspected and measured the land and to lay the survey stones. At the time of occurrence between about 8.00 a.m. to 8.30 a.m. he had gone to the house of P.W.1 and his daughter was not doing well. On hearing the noise from the lands of the appellant and P.W.1, went to the place of occurrence. At the time the appellant abused P.W.1 in filthy language referring to her caste and the appellant assaulted P.W.2. When P.W.1 intervened the appellant, he assaulted her by pulling her hair and torn her blouse.

16. One periyasamy was examined as P.W.6. He has also stated that the appellant referred to caste name of the P.W.1 and corroborated the evidence of P.W.1.

17. One Ramachandran was examined as P.W.8. He has spoken about that he was also one of the witness and he was engaged by the appellant for doing agricultural work. At that time he saw the occurrence and also the appellant abused P.W.1 by referring her caste.

18. P.W.9/Radha Krishnan has spoken about the appellant took him to his land for the purpose of formation of a ridge and when the P.W.1 and P.W.2 objected to formation of the ridge at about 8.30 a.m. on the date of occurrence. Due to that both the parties were attacked and abused each other.

19. P.W.11 was spoken about the preparation of observation mahazar and he turned hostile and his signature has been marked as Ex.P.5.

20. P.W.14/Dr.Thirunavukarasu has stated that he initially examined P.W.2 and she told him that on the same day, one known person assaulted her with spade and on examination he was able to find abrasion on the left hand shoulder and further P.W.2 had complained of pain in the left shoulder and after taking X-Ray, body injuries were ruled out and he came to the conclusion that injuries sustained by P.W.2 were simple in nature and accordingly he furnished Accident Register and the Accident Register was marked as Ex.P.9.

21. P.W.13 has spoken about the recording of complaint from P.W.1 on 24.07.2009 at around 12.00 A.M. on the information given by the Government Hospital, Kallakurichi and also of registration of FIR on the same day at around 12.00 noon in station Cr.No.122/2009 under Section 297(b), 324, 354 and 506 (ii) IPC and 3(1)(x) of S.C/S.T(POA) Act 1989 and P.W.13 has further spoken about the handing over the case records to Superintendent of Police, Kallakurichi Sub Division.

22. P.W.15, the Superintendent of Police investigated the matter. P.W.1 has clearly stated that there was dispute between the appellant and the P.W.1 regarding ridge between the lands of both the parties and also witnesses have spoken that the surveyor came and measured the properties. P.W.8 and P.W.9 have spoken regarding that the appellant called for the work to put up the ridge. When they doing the work, there was a quarrel between both the parties. From the evidence of P.W.1 to P.W.14, it is clearly proved that the accused/appellant abused P.W.1 and her mother and when she intervened, the appellant abused her and referring her to caste name. Both the parties abused each other and also sustained injury and they filed the case against the appellant and counter case was also registered. But the prosecution has not investigated the case properly and they filed the false case against the appellant. Whereas the P.W.1, P.W.2 and P.W.4 clearly stated that there was a quarrel between them and at that time, the appellant had assaulted with wooden handle of spade on the left shoulder and left hand elbow of her mother. P.W.1 clearly stated that her mother sustained injuries and the entry made in the Accident Register clearly shows that P.W.1 is mother, one known person attacked her with wooden handle of spade and sustained the injuries and also certificate issued by P.W.12 Tahsildar shows that the appellant belongs to the Vellazhapilla Community. P.W.1 belongs to Adi Dravidar Community. The evidence of P.W.1 to P.W.4 has clearly established that the appellant referred the caste name of P.W.1. From the evidence of P.W.1 and P.W.4 for offence under Section 324(2 counts) of IPC read with Section 3(1)(x) of SC/ST (POA) Act 1989. From the evidence of P.W.1 and P.W.14 and Accident Register Copy/Ex.P.9. The prosecution has clearly established that the appellant caused injuries to P.W.2. Therefore, from the evidence of P.W.1, P.W.2 and P.W.14 shows that the appellant caused injuries to P.W.1 and her mother. Therefore, they committed the offence and proved that the appellant referred to the caste name of the defacto complainant and therefore, he committed the offence under Sections 354 (2 counts), 324 (2 counts) 506(ii) of IPC and 3(1)(X) of SC/ST (POA) Act 1989. P.W.14/Doctor who examined P.W.1 and P.W.2 in the Government Hospital and also issued copy of the Accident Register which

shows that known person attacked with wooden handle of spade and on examination he was able to find abrasion on the left hand shoulder. The appellant has committed the offence under Section 324 (2 counts) of IPC and the prosecution has proved its case beyond reasonable doubt. The Sessions Judge has given cogent reason for convicting the appellant. Though the other accused was acquitted and no appeal was preferred by either of the respondent and the defacto complainant. The learned counsel for the appellant submitted that injuries sustained by the appellant has not taken into consideration. There is no evidence to show that he has sustained injuries and none of the witnesses have spoken about the specific injury sustained by the appellant and also they have filed Ex.D.1/wound certificate, but, it was not supposed to be issued at the time of admitting in the hospital. If they admitted in the hospital defaultly, there must be an entry in the Accident Register. No such copy of the register has been produced. The investigation officer closed the complaint filed by the appellant as mistake of fact. The Accident Register Ex.P.9 clearly shows that, one known person attacked with wooden handle of spade and Doctor examined regarding the injuries sustained. Therefore, the defense taken by the appellant has not been established with regard to the injuries sustained by him. The Surveyor has fixed the boundaries of the lands of the appellant and P.W.1 and thereafter, the appellant with the assistance of some other persons put up a ridge over the land of the defacto complainant and when the defacto complainant objected the same and the appellant abused her with filthy language referring her caste and the appellant assaulted them. The witnesses those who have done the work to the appellant have also supported the case of the prosecution that the appellant uttered the caste name of the defacto complainant and they have not stated that defacto complainant assaulted the appellant.

23. The learned Judge has given cogent reason to establish that the appellant has committed the offences under Sections 354 (2 counts), 324 (2 counts) 506(ii) of IPC and 3(1)(X) of SC/ST (POA) Act 1989. Therefore, this Court does not find any valid reason to interfere with the judgment of the learned Sessions Judge and finds no merit in the appeal and the appeal is liable to be dismissed. As an appellate Court after perusing the entire oral and documentary evidence independently, this Court has found the appellant has committed the offence as stated above.

24. In view of the above, the Criminal Appeal is dismissed. The judgment of conviction dated 27.09.2013 made in S.C.No.161 of 2010 passed by the learned Special Juge, (Principal Sessions Judge), Villupuram, is hereby confirmed and the respondent police is directed to secure the custody of the accused to undergo the remaining period of sentence imposed by the learned

Special Judge (Principal Sessions Judge), Villupuram, if any.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge (Principal Sessions Judge)
Villupuram.
2. The Judicial Magistrate,
Kallakuruchi.
3. The Chief Judicial Magistrate,
Villupuram.
4. The Deputy Superintendent of Police,
Kallakuruchi Sub Division,
Villupuram District.
5. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.74085

Crl.A.No.683 of 2013
and M.P.No.1 of 2013

RSI (CO)
GSP (03/12/2018)

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