

BAIL SLIP

The Sole Appellant/Accused Prakash S/o. Palanisamy was enlarged on bail in MP 1 of 2011 in CrI.A. 809/2011 dated 18.12.2011 by this Hon'ble High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.809 of 2011

Prakash ... Appellant/Accused

Versus

State rep. By
Deputy Superintendent of Police,
Valparai Sub Division,
Anaimalai Police Station,
Coimbatore District. ... Respondent/Complainant

Criminal Appeal filed under Sections 374 of the Code of Criminal Procedure, to set aside the order of conviction and sentence dated 15.11.2011 passed in S.C.No.29 of 2010 on the file of the learned Principal District and Sessions Judge (Special Court), Coimbatore and acquit the appellant.

For Appellant : Mr.R.Anbukarasu (Legal Aid Counsel)

For Respondent : Ms. T.P.Savitha
Government Advocate (CrI.Side)

JUDGMENT

The appellant herein is the sole accused in S.C.No.29 of 2010 on the file of the learned Principal District and Sessions Judge (Special Court), Coimbatore. He stood charged for the offences under Section 294(b), 323 (3 counts) and 506(i) of IPC and 3 (1) (x) of S.C. and S.T. Act. The accused denied the charges and asked for trial. Therefore, he was tried on the charges. After full fledged trial, the learned principal Session Judge found him guilty of offences under Section 294(b), 323(3 Counts) and 506(i) of IPC and 3 (1) (x) of S.C. And S.T. Act. The accused was accordingly convicted and sentenced as follows.

Section 3 (1) (x) of SC/ST Act	Sentenced him to undergo 6 months R.I. And imposed fine amount of Rs.1,000/-1/d.2 months R.I.
Section 294(b) IPC	Imposed a fine amount of Rs.500/- 1/d.3 weeks R.I.
Section 323 [3 counts] IPC	Imposed a fine amount of Rs.500/- for each count 1/d.1 months R.I. For each count.
Section 506(i) IPC	Sentenced him to undergo 6 months R.I. With fine of Rs.1,000/- 1/d.2 months R.I.

Challenging the said conviction and sentence the accused is before this court with the present criminal appeal.

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

P.W.1 Sumathi is residing in Authu Pollachi . She belongs to Hindu Chakkiliyar Community. Her father belongs to Valluvar Community and he was working as a painter in his village. The appellant herein is the resident of the same village. On 05.04.2010 at about 04.00p.m., the appellant and P.W.4 (Ayyavoo) in drunken mood came to the petty shop run by the father of P.W.1. Thereafter, P.W.4 took five balloons without paying any money and handed over the same to the appellant. Out of said five balloons, the appellant throw out the three balloons and both of them went away from the said place. Within 10 minutes, they returned to the petty shop and asked the P.W.1 to give banana and cigarette. For which, P.W.1 said "you pay for banana", due to the said reply, the appellant humiliated and abused the P.W.1 by referring his caste name. The said act was questioned by P.W.5 (Manian @ Manikandan), so, the appellant pulled down the P.W.1. At the same time, P.W.4 (Ayyavoo) was also pushed down by the appellant. After hearing the news, the father of the P.W.1 came to the scene of occurrence and asked the appellant, "why you have acted like this?", for which, the appellant pushed him near to the said shop. Further, through his leg, he assaulted the left chest of P.W.1. Further he made threat to the P.W.1 and others.

3. In connection with the said occurreny on the same day at about 10.00 p.m. P.W.1 lodged a complaint under Ex.P.1 in Anamalai Police Station. Meanwhile, all the injured were admitted in the Government Hospital, Pollachi in which P.W.7 Assistant Medical Officer (Dhanalakshmi) gave treatment to them.

4. According to P.W.7 abrasion was found in the size 2x2c.m. on the left hand of P.W.5. P.W.2 Chanthanakumar had pain all over the body and the same way P.W.4 (Ayyavoo) complained pain all over the body. According to the Doctor, the

injuries sustained by the above said persons are simple in nature. She issued a Accident Register copy of P.Ws.2, 4 and 5 under Exs.P.3 to 5.

5. On receipt of the complaint given by P.W.1, on 05.04.2010, P.W.10, Balamurali Sundaram, the then the Sub Inspector of Police, Authur Police Station registered a case in Crime No.170 of 2010 under Section 294(b), 323, 506 (i) of IPC and Section 3 (1) (X) S.C. S.T. Act. Ex.P.11 is the printed FIR. After the registration of the case, he handed over the case records to P.W.10, Deputy Superintendent of Police, Valparai Sub Division for investigation. On 06.04.2010 P.W.11, M.Madasamy, the then Deputy Superintendent of Police, Valparai Sub Division, [Anaimalai Police Station] took up the case for investigation and on the same day at about 7.00p.m., he went to the scene of occurrence. In the presence of P.W.6 (Manikandan) and one Muthu, he prepared an observation Mahazar under Ex.P2. He examined witnesses and recorded their statements and on the same day at about 2.30p.m., near to Authu Pollachi Madurai Veeran Temple, he arrested the accused and sent him to remand. He sent a letter to Tahsildar, Pollachi for issuing a community certificate to P.W.1 to P.W.5 and to the accused. On 13.04.2008, he received wound certificate from the Doctor, who treated P.Ws.2, 4 and 5. Further, he received a Community Certificate from P.W.8 (Akbar Ali) and P.W.9 (Venkatesan), both of them are Zonal Deputy Tahsildar and Tahsildar in Aanaimalai and Pollachi respectively. According to them, P.Ws.1 to 5 belongs to scheduled caste and the accused belongs to non scheduled caste. On 06.05.2010, he examined P.W.1 and recorded her further statement. On 13.05.2010, on completion of investigation, he filed a Final Report.

6. Based on the above materials, the trial Court framed charges under Section 294(b), 323, 506(i) of IPC and 3 (1) (x) of S.C. S.T. Act. The accused denied the charges and wanted the trial. During the trial in order to prove the case against the accused on the side of the prosecution as many as 11 witnesses were examined as P.Ws. 1 to 11 and 12 documents were marked as Ex.Ps.1 to 12.

7. Out of the above said witnesses, P.W.1 is the defacto complainant, she has spoken about the wordy altercation happened and about the manner of abuse made by the accused at the time of occurrence. Further, she has stated that during the time of occurrence accused took 5 balloons without paying any paise and further demanded to give banana and cigarette. In her evidence, she clearly spoken about the assault made by the accused towards P.Ws.2, 4 & 5.

8 P.W.2 is the resident of same village, he has stated in his evidence that P.W.1 is his daughter. Further, he stated

about the abuse made by the accused to his daughter and about the assault committed by the accused. P.W.3 (Valliammal) is also residing in the same village. She belongs to the Hindu Mathari Community. She has stated in her evidence about the request made by the accused to P.W.1 for cigarette and banana and about the abuse made by the accused by referring the caste name of P.W.1.

9. P.W.4 (Ayyavoo) stated in his evidence that prior to the occurrence, he accompanied the accused and at that time of occurrence, both of them took 5 balloons from the petty shop of P.W.1. He further stated that as a second time, the accused asked the P.W.1 to give banana and cigarette, for which, P.W.1 asked to pay money. Subsequently, the accused assaulted the P.Ws.2, 4 and 5.

10. P.W.5 also corroborates the evidence of P.W.1 to 3.

11. In the said situation, P.W.6 stated in his evidence that he stood as witness for the preparation of observation mahazar. P.W.7, is the Doctor in the Government Hospital, Pollachi, she stated in her evidence about the treatment given to the P.W.2, 4 and 5. Further, she has stated that she issued wound certificate as Ex.Ps.3 to 5.

12. P.W.8 (Akbar Ali) has stated in the trial Court that the accused belongs to Hindu Devanka Chettiyar Community, for which, he issued a Community Certificate as Ex.P.6. P.W.9 Venkatesan, Tahsildar, Pollachi has stated in his evidence that P.W.5 belongs to Hindu Arunthathiyar Community, P.W.4 belongs to Hindu Mathari Community, P.W.1 and P.W.2 belongs to Valluvar Community.

13. P.Ws.10 and 11 are the police officers, they gave evidence in the trial Court in regard to the registration of case, investigation and about the filing of final report against the accused.

14. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false, however, he did not choose to examine any witness nor did he mark any document on his side. On considering the above, the learned Principal Sessions Judge found the accused guilty for the offences under Sections 294 (b), 323, 506(i) of IPC and 3 (1) (x) S.C. S.T. Act. Accordingly, the accused was convicted and sentenced as stated in the first paragraph of this judgment. Aggrieved by this conviction and sentence, the accused has come up with the present appeal.

15. I have heard the learned counsel for the appellant/accused and learned Government Advocate for the respondent/State and also perused the records carefully.

16. Admittedly, the victims in this case, (i.e.) P.Ws.1 to 5 belongs to the community recognised under the scheduled caste. On the other hand, the accused belongs to Hindu Devanka Chettiyar Community, which was come under the category of backward class.

17. In the said situation, the learned counsel appearing for the appellant would submit that in respect of cases registered under the provisions of S.C/ S.T. Act, the investigation officer has to be necessarily authorized by the Superintendent of Police. Further, he ought to have completed the investigation within a period of 60 days. In this regard, he relied the judgments of this Court delivered in Criminal Appeal No.459 of 2018 dated 10.07.2015, in which, in para No.40 it was observed as follows:

"Now to investigate a special type of offence under Sc and ST (P.A.) Act, which is a social crime, certain mandatory statutory provision has been made to undertake investigation and complete the investigation within a time frame when that is violated, the Court has to set at naught such process of investigation, that is how in Sambasivam (supra) this Court held that any investigation done in violation of Rule 7 (1) will vitiate the entire criminal proceedings. Thus, the principles laid down in the said decided cases squarely applies to the facts of this case. "

18. Further, in the judgment of this Court in Criminal Appeal No.1076 of 2007 reported in 2016 SCC Online Mad 4340, in which, it was observed in para No.22 as follows:

"22.Now, in the instant case, as per the rule framed under SC/ST (PA) act, the investigation has to be done by a DSP, who should be specifically empowered by a competent officer as specified in the Rules. It cannot be a matter of oral instructions. There must be a written order passed under the Rules framed under the SC/ST (PA) Act specifically empowering the DSP. The DSP has to state in Chief examination that he has been so empowered. But in this case, he did not say so. Further during his cross examination, he was specifically asked whether he was so empowered. But, the prosecution could not

establish the same. No records to show that he has been so empowered. In the circumstances, the principles laid down by this Court squarely applies to this case. Thus, the prosecution under Section 3 (1) (x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vitiates. "

19. In this case, the investigating officer at the time of giving evidence has stated that he was authorized by the District Superintendent of Police, Coimbatore for conducting investigation in this case. Further, he has stated that the said authorization was exhibited in this case but on going through all documents exhibited, there is no such document was produced by P.W.11 to show that he was authorised by the Superintendent of Police, Coimbatore for investigating this case. Moreover, he has stated in his evidence that the case was took up for investigation on 06.04.2010 and after completing investigation charge sheet has been filed on 13.05.2010. But, on going through the date, seal found in the charge sheet shows that the charge sheet has been filed in the Magistrate Court only on 09.08.2010 and not on 13.05.2010, so, in this regard P.W.11 gave a false evidence in the trial Court. Accordingly, without any authorisation he completed the investigation and filed a final report beyond the period of two months, which shows he violated the Rule 7 of S.C./S.T. Act. Accordingly the judgment relied on by the learned counsel for the appellant is applicable with the facts of the case in our hand.

20. In respect to the offence under Section 506(i) of IPC, the learned Principal District and Sessions Judge, Coimbatore, convicted the accused and sentenced to undergo six months RI and to pay a fine of Rs.1,000/-. In respect to the said conviction, the learned counsel for the appellant made a submission that the evidence given by P.Ws.1 to 5 is not at all attracted the said offence. He has further submitted that none of the witnesses has stated about the threat made by the accused.

21. Now on considering the said submission to prove the offence under section 506(i) of IPC, the prosecution must show the evidence for attracting the ingredients of the said offence. In this case, in the trial Court P.Ws.1 to 5 speaks about the occurrence, in the said witnesses, P.Ws.3 to 5 did not say anything about the threat made by the accused. On the other hand, P.Ws.1 and 2 alone has stated that when at the time of leaving the occurrence place the accused has spoken a word "cq;fis vy;yhk; Jiyj;Jg; NghLNtd;.". Now on the close reading of the said evidence would appears that he uses the said wordings not before the P.Ws.1 and 2. According to him, the said threat is not against the persons, who are all present in the

occurrence place. Accordingly, the evidence given by the P.Ws.1 and 2 is not upto the level that the accused has made life threat to them. The learned Trial Judge has not considered the said aspect in perspective manner. So, the finding in respect to the conviction awarded to the offence under Section 506(i) of IPC needs interference.

22. In the trial Court, the accused has convicted for the offences under Section 294(b) and 323 (3 counts) of IPC. It is an admitted fact the occurrence had happened in a public place near to the petty shop run by P.W.1. P.W.4, who is the person accompanying with the accused has also stated about the assault made by the accused. According to him, P.Ws.2, 4 and 5 are sustained simple injury and all of them clearly stated in their chief examination that during the time of occurrence the accused assaulted them. The said evidence is supported through the evidence of P.Ws. 1 and 4. The Doctor, who treated P.W.2, 4 and 5 has also stated in his evidence as on 05.04.2010 on the date of occurrence the above said witnesses are came to the Government Hospital, Pollachi and complained about the pain. On culling out the entire evidence given by the injured and the defacto complainant shows that at the time of occurrence in public place the accused had not used any abusive words in order to create an annoyance to the others. So without evidence we cannot said that the accused committed an offence under Section 294(b) of IPC. In general for proving the offence under Section 294(b) IPC, the above two ingredients are very much essential. But in this case in the absence of above two ingredients, we are not in a position that the accused committed an offence under Section 294(b) IPC. The learned Principal District Session Judge, Coimbatore, did not consider the said aspect and convicted the accused for the offence under Section 294(b) of IPC is nothing but an error.

23. On the other hand, since the evidence given by the P.Ws.1, 2 and 5 clearly establish at the time of occurrence the accused assaulted the injured through his legs and hands. The said evidence supported through the evidence of medical officer. In order to deny the said evidence nothing was brought on record on the side of the defence. Accordingly the accused committed the offence under Section 323 (3 Counts) of IPC. Therefore, this Court came to the conclusion that during the time of occurrence the accused kicked the P.Ws.2, 4 and 5 through his legs and hands and caused simple injury. Accordingly, he committed the offence under Section 323 (3 counts) of IPC. The trial Court also considered the entire evidence and convicted the accused for the above said offences does not need any interference.

24. Therefore, the appeal is partly allowed. The conviction and sentence awarded to the appellant under section 3 (1) (x) S.C./S.T. Act, 294 (b) and 506(i) of IPC are set aside. With regard to the other offence under Section 323 (3 Counts), the conviction and sentence awarded by the learned Principal District and Sessions Judge (Special Court), Coimbatore in S.C.No.29 of 2010 dated 15.11.2011 is confirmed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsg1

To

- 1.The learned Principal District and Sessions Judge (Special Court), Coimbatore.
- 2.The Judicial Magistrate No.I, Pollachi.
- 3.The Chief Judicial Magistrate, Coimbatore (For Information)
- 4.The Deputy Superintendent of Police, Valparai Sub Division, Anaimalai Police Station, Coimbatore District.
- 5.The Public Prosecutor, High Court, Madras.

Copy to:

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

+1cc to Mr.R.Anbukarasu, Advocate, S.R.No.52013

CrI.A.No.809 of 2011

SVN(CO)

rrs 05/10/2018