

Bail Slip

The appellants herein/Accused 1 and 3 viz Raji and Ilayaraja, S/o.Velayutham were released on bail by the order of this High Court, dt.12.05.2009 made in CrI.M.P.No.1/2009 in CrI.A.No.201/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM

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

CRL.A.No.201 of 2009
and
M.P.No.1 of 2009

1.Raji
2.Ilayaraja

.. Petitioners/Appellants/Accused 1 & 2

Vs

The State of Tamil Nadu,
Rep. by Deputy Superintendent of Police,
Villupuram Taluk Police Station Cr.No.734/2007
Villupuram District.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to the proceedings in S.C.No.76 of 2008 on the file of the Special Court, Principal Sessions Judge, Villupuram and set aside the order of conviction dated 15.04.2009 and set the appellant at liberty.

For Petitioner : Mr.M.Devaraj

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

O R D E R

This Criminal Appeal is preferred by the appellants/accused Nos.1 and 2 against the order of conviction and sentence passed

by the learned Special Court Principal Sessions Judge, Villupuram in S.C.No.76 of 2008 dated 15.4.2009, wherein the learned trial Court convicted the 1st appellant/accused for the offences under sections 341, 326 and 3(1)(X) of Prevention of Atrocities against Schedule Caste and Schedule Tribe Act and convicted the 2nd appellant/accused under section 3(1) (X) and 3 (1) (11) of Prevention of Atrocities against Schedule caste and Schedule Tribe Act and imposed sentence of 5 years rigorous imprisonment for the offences under section 341 of IPC and imposed a fine of Rs.200/- with a default sentence of 1 week simple imprisonment and fine of Rs.10,000/- with default sentence of 6 months rigorous imprisonment in respect of offences under section 326 of IPC and 2 years Rigorous Imprisonment with fine of Rs.2,000/- with default sentence of 6 months simple imprisonment in respect of 3(1)(X) of SC & ST Act. The sentence imposed in respect of the 2nd appellant is 2 years rigorous imprisonment with fine of Rs.2000/- with default sentence of 6 months simple imprisonment in respect of 3(1) (X) SC & ST Act and 2 years rigorous imprisonment with fine of Rs.5000/- with default sentence of 6 months rigorous imprisonment in respect of 3(1) (11) of SC & ST Act.

2. Brief case of the appellant/accused 1 and 2:

The case of the prosecution is that PW 1, the defacto complainant return from work and went to his field and saw two goats grazing there. Thereafter he went to the house of the appellants and questioned Vanitha regarding the same. After that when PW 1 was returning from the field, the appellant/accused A1 restrained him and attacked with iron rod on the face and body, thereby causing bleeding injury on the nose. When PW 2 came out and questioned the appellants/accused she was manhandled by A2 and scolded using the caste name. The appellants/accused belongs to the Vanniar caste and the injured belongs to Irular community. Both the PW1 and PW 2 were injured and taken to the Government Hospital Vilupuram. PW 3 Munian enquired about their status in the hospital on 25.7.2007 at about 10.00 PM. At that time PW 1 written a complaint and the same was given to the Police Station. Immediately on the basis of the complaint, the respondent police registered the FIR in Cr.No.734 of 2007. The FIR is Ex.P.1.

3. PW7 Doctor attached to the Government Hospital, Vilupuram examined PW 1 at about 7.50 PM and recorded the injuries sustained in the accident register copy is Ex.P3.

4.PW1 disclosed that he was attacked by known 3 persons at about 6 PM with iron rod.

5.PW10 Sub Inspector of Police received the complaint in CSR 350 of 2007 and forward the same to the Inspector of Police.

6.PW11 Inspector of Police registered the FIR and forward the same to PW12, Deputy Superintendent of Police.

7.PW12 conducted the investigation and examined the witnesses and obtained the accident register pertaining to the injured witnesses.

8.On completing the investigation, PW12 filed the final report on 2.11.2007 under Section 3(1) (11) of SC & ST Act.

9.The learned trial Court framed the charges against the appellants/accused under section 3(1) (11) of SC & ST Act. The appellants /accused denied the charges.

10.During the trial, the prosecution examined PWs1 to 12, marked Exhibits P 1 to7 and no witnesses were examined on the side of the appellants/accused.

11.After the trial, on appreciating the material available on record, the learned trial Court convicted the appellants/accused for the offences under section 3(1) (11) of SC & ST Act, 326 of IPC. Aggrieved over the same, the appellants/accused preferred this criminal appeal.

12.The learned counsel for the appellants/accused Nos.1 and 2 submits that the trial Court had failed to note that the prosecution case initially was that there was previous enmity which was not supported by the PW1 in his evidence however, the motive for the occurrence is that the Goat of the appellants had grazed the Tapioca of the complainant which was the cause for the occurrence. But the evidence of PW 1 is silent to as to how he came to know that the goats which grazed in his field belong to the appellants. This would clearly show that the entire case is fabricated one against the appellants.

13.The learned counsel for the appellants/accused Nos.1 and 2 submits that the trial Court had failed to note that the PW2 has not spoken anything about assaulting PW 2 by the 2nd appellant where as PW 2 in her evidence has spoken about the same which is quite contradictory and unreliable.

14.The learned counsel for the appellants/accused Nos.1 and 2 submits that the trial Court had failed to note that the complaint by PW 3 is not the first information since the doctor PW7 has clearly deposed that on treating PW1 had immediately sent the intimation to the police.

15.The learned counsel for the appellants/accused cited the following decisions in support of their contentions:

- 1) AIR 2014 SCC 1437 Dasan Vs State of Kerala and another.
- 2) 2011 STPL 14796 SCC Asmathunnisa Vs State of A.P. rep. by the public prosecutor.

16.The learned Government Advocate (Criminal Side) appearing for the respondent supported the findings of the trial Court and sought for dismissal of the appeal.

17.I have heard Mr.M.Devaraj, learned counsel for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

18.In the case on hand, the learned trial Court failed to appreciate the material contradictions and infirmities under mentioned affecting the substratum of the case:

- i) PW1 deposed in this case that his goat grazed the topica of the complainant which is root cause of the occurrence. But PW 1 is silent as how he came to know that the goats grazed in his field belongs to the appellant/accused. This is the only motive attributed against the appellant/accused in this case. But PW 1 could not support the previous enmity which was corroborated by the other witnesses and failed to answer the same in affirmative. Hence the FIR registered against the appellant/accused is nothing but fabricated document.
- ii) On careful reading of the evidences of PWs1 and 2 with

their 161 statements, nothing can be seen regarding the calling of caste name. Therefore the conviction in respect of offences under section 3(1)(10) and (11) of SC & ST Act cannot be sustained.

- iii) PW2 in her evidence deposed that she came from the house after hearing the noise. Therefore PW2 could not have witness the occurrence and come to the scene of occurrence after the incident.
- iv) PW7 Doctor deposed about the injuries sustained but the x ray copies were marked except the oral statement alleging that the injuries grievous in nature. Further PW7 immediately sent the intimation to the police regarding the occurrence. Therefore the complaint made by PW3 is doubtful.
- v) On careful reading of the evidences adduced in this case, I am inclined to interfere with the judgment of the learned trial Court.

19. The trial Court had failed to appreciate the fact that the scene of occurrence was not at all public place and the incident as narrated by the witnesses does not attract the offence under section 3(1)(X) and 3(1) (11) of Prevention of Atrocities Against Schedule Caste and Schedule Tribe Act. Hence the conviction based on the same is unsustainable. Further as per the prosecution case, the motive was only the goat grazing the field of the PW1 and not the caste. Merely because, the victim belongs to Schedule Tribe, offences under Prevention of Atrocities against Schedule Caste and Schedule Tribe Act cannot be said to have been committed.

20. The prosecution had failed to establish that the injury sustained by the 1st appellant is grievous in nature without making the X-Ray. The mere statement of the doctor unsupported by any material cannot be the basis of the conviction. Further the breaking of the tender bone in the nostril cannot be termed as grievous injury.

21. In the result:

a) This criminal appeal is allowed and thereby the conviction and sentence imposed on the appellant/accused in S.C.No.76 of 2008, dated 15.4.2009, on the file of the learned Special Court Principal Sessions Judge Vilupuram is set aside.

b)The appellants/accused are acquitted from all the charges and the fine amount if any paid by the appellants/accused shall be refunded by the trial Court;

c)The bail bond if any executed by the appellants/accused are stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Special Court, Principal Sessions Judge,
Villupuram.

2.The Judicial Magistrate No.1, Villupuram.

3.The Chief Judicial Magistrate, Villupuram.

4.The Superintendent,
Central Prison, Cuddalore.

5.The Public Prosecutor,
High Court, Madras.

6. The Deputy Superintendent of Police,
Villupuram Taluk Police Station
Villupuram District.

7.The Director General of Police,
Mylapore, Chennai-4

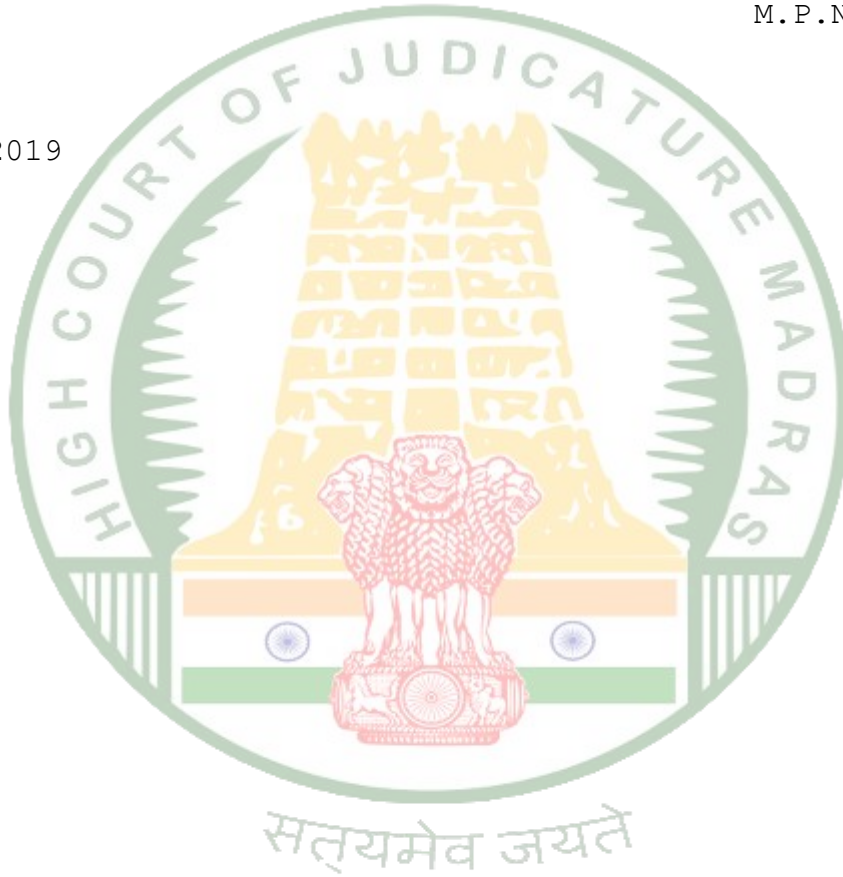
copy to:

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

+1cc to Mr.M.Devaraj, Advocate sr.no.7168

CRL.A.No.201 of 2009
and
M.P.No.1 of 2009

mr(co)
nr 05/04/2019



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