

Bail Slip

The Appellants/Accused namely 1. Dhanasekaran, S/o. Chakrapani, 2. Boopathy, S/o. Rajendiran, 3) Swaminathan, S/o. Chengalrao, 4) Govindarasu, S/o. Chengalrao, 5. Thangamani, S/o. Palanisamy were released on bail vide order dated 30.09.2010 made in MP.1/10 in CrI.A.583/10.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.583 of 2010

1.Dhanasekaran
2.Boopathy
3.Swaminathan
4.Govindarasu
5.Thangamani

... Appellants/Accused

Vs

State Rep by:
The Deputy Superintendent of Police,
Kadampuliyur Police Station,
Cuddalore District.
(Crime No.263/2008)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., praying to set aside the order passed by the learned Special Sessions Court constituted under scheduled caste and scheduled tribes (Prevention of Atrocities) Act 1989, in S.C.No.124 of 2009, dated 14.09.2010.

For Appellants :M/s.K.Gandhi Kumar

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

J U D G M E N T

The appellants are arrayed as A1 to A5 in S.C.No.124 of 2009, on the file of the learned Special Sessions Court constituted under scheduled caste and scheduled tribes (Prevention of Atrocities) Act 1989. They stood charged for the offence under Sections 147, 341, 352, 354 of IPC and under Section 3(i) (x) and 3(i) (xi) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By judgment dated 14.09.2010, the trial Court convicted the appellants and sentenced as follows:

Name of the accused	Sentence Imposed
A.1.Dhanasekaran	i. Sentenced to undergo Rigorous imprisonment for ONE MONTH for the offences u/s.341 IPC.
	ii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(x) of S.C and S.T. (Prevention of Atrocities Act, 1989.
	iii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(xi) of S.C and S.T.(Prevention of Atrocities Act, 1989.
A.2.Boopathy	i. Sentenced to undergo Rigorous imprisonment for ONE MONTH for the offence u/s.341 IPC.
	ii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple imprisonment for TWO MONTHS for the offence u/s. 3(1)(xi) of S.C and S.T. (Prevention of Atrocities Act, 1989 read with Section 352 IPC.

Name of the accused	Sentence Imposed
A.3.Swaminathan	i. Sentenced to undergo Rigorous imprisonment for ONE MONTH for the offence u/s.341 IPC.
	ii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(xi) of S.C and S.T. (Prevention of Atrocities Act, 1989 read with Section 354 IPC.
A.4.Govindarasu	i. Sentenced to undergo Rigorous imprisonment for ONE MONTH for the offence u/s.341 IPC.
	ii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(x) of S.C. and S.T. (Prevention of Atrocities Act, 1989.
	iii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(xi) of S.C and S.T.(Prevention of Atrocities Act, 1989.
A.5.Thangamani	i. Sentenced to undergo Rigorous imprisonment for ONE MONTH for the offence u/s.341 IPC.
	ii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(x) of S.C and S.T. (Prevention of Atrocities Act, 1989).
	iii. Sentenced to undergo Rigorous imprisonment for TWO YEARS and to pay a fine of Rs.1,000/-(one thousand only) in default to undergo Simple Imprisonment for TWO MONTHS for the offence u/s. 3(1)(xi) of S.C. and S.T.(Prevention of Atrocities Act, 1989.

The sentences imposed against the accused are ordered to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2. The case of the prosecution is as follows:

PW.1 Dhanalakshmi, is a resident of Malikampattu Colony. On 16.08.2008 at about 05.00 p.m., after finishing her work, while she was returning to her home along with P.W.2-Vasanthi and PW.7-Valarmathi, the appellants herein waylaid the PW.1 and abused by pinpointing their Caste name. During the time of occurrence, the second appellant/accused Boobathy assaulted on her cheeks by using hand, 3rd accused outraged her modesty by pulling her saree and the 5th accused scolded the PW.1 by referring to her caste in public place. Further, the 4th appellant instructed the other accused for taking the PW.1 and for moving the area. During that time, PW.3, who is the employer of PW.1 question the same, for which the appellants assaulted the PW.3-Pandiyarajan. Further, they assaulted the father of PW.3 also.

3. Subsequent to the occurrence, on the next day at about 10.00 a.m., PW.1 lodged a complaint before Inspector of Police, Kadampuliyur Police Station, under Ex.P1. After receiving the complaint given by PW.1, PW.9-Sub Inspector of Police, Panrutti, taken the same on file in CSR.No.246 of 2008 and thereafter on 26.08.2008 he registered the case in Crime No.263 of 2008 for the offences punishable under Sections 147, 341, 323, 354 of IPC and under Sections 3(1) (x) of S.C and S.T (Prevention of Atrocities) Act, 1989. After registration of the case, he handed over the case records PW.10 for investigation. Meanwhile, the Superintendent of Police, Cuddalore, issued proceedings under Ex.P9 for further investigation of this case.

4. During the course of investigation on 31.08.2008, PW.10-Deputy Superintendent of Police, Panrutti, went to the scene of occurrence and prepared an observation mahazar under Ex.P10. Further he prepared rough sketch under Ex.P11.

5. After preparation of those documents, he examined the witnesses and recorded their statements. Subsequent to the examination of the witnesses on 01.09.2008, he sent a letter to PW.8 viz., Abaranji, Tahsildar, Panrutti, with a request to issue the community certificate for the appellants as well as to PW.1. After receiving the requisition given by PW.10, PW.8-Abaranji, Tahsildar, Panrutti, issued the community certificate pertaining to PW.1, PW.2 and PW.7 which was marked as Ex.P7. In the same way, PW.6-Kumutham issued community certificate pertaining to A1 to A5 under Ex.P5. According to the community certificate issued by PW.6 and PW.8, the caste of the appellants did not fall under Scheduled Caste. But the victim

PWs.1,2 and 7 belong to the community which was classified under Schedule caste. After receiving the community certificates PW.10, completed the investigation and thereafter on 27.01.2009 he laid the charge sheet.

6. Based on the above materials, the trial Court framed charges against the accused as stated in the first paragraph of this judgment and for which, all the accused denied the same. In order to prove the case of the prosecution as many as 10 witnesses were examined as PW1 to PW10 and 11 documents were exhibited as P1 to P11.

7. Out of the said witnesses, PW.1-Dhanalakshmi, is the resident of Malikampattu Colony, belongs to the community of Adidravidar recognized as Scheduled Caste. All the accused are belong to Hindu Padayatchi community. She has stated that on 16.08.2008 at about 05.00 p.m., when she was returning her home along with P.W.2-Vasanthi and PW.7-Valarmathi, all the accused intercepted and quarrelled with P.W.1 stating that where are you going. In the said transaction, the first accused Dhanasekaran abused the P.W.1 by referring her caste name. During the time of occurrence, the second appellant/ accused Boobathy assaulted her cheeks by using his hand, further the 3rd accused attempted to remove her saree and the 4th and 5th accused abused her in filthy language. She has further stated after hearing the said occurrence, PW.3-Pandiarajan, came and questioned the accused about the occurrence. For that, all the accused assaulted the PW.3-Pandiarajan and his father. Since PW.1's husband is out of station, on the next day morning at about 11.00 a.m., she lodged the complaint before police station.

(ii) PW.2-Vasanthi and PW.7-Valarmathi alleged to be the eye witnesses to the occurrence they have not stated anything in support of the prosecution.

(iii) PW.3 has stated about the occurrence in support of the evidence given by PW.1, he has stated that on the next day of occurrence at about 08.00 a.m., near to the crocery shop all the accused assaulted him. He has further stated due to the said assault, he sustained injuries on his head and hip.

(iv) PW.6-Deputy Tahsildar, Panruti, has stated about the requisition given by P.W.10, he issued a certificate, in which, he certified all the accused in this case belong to Hindu Padayatchi Community.

(v) PW.8 who is working as a Special Deputy Tahsildar, Tiruvannamalai, has stated that on the requisition made by PW.10, he issued a certificate to Pws.1,2 and 7 certifying that all of them belong to Adidravidar Community, which was recognised as Scheduled Caste.

(vi) Pws.9 and 10 are Police Officers who have stated about the registration of the case, the details of the investigation and about the filing of the final report.

8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C, and for which, they denied the same as false. However, one witness was examined on the side of defence as D.W.1 and no documents marked on their side.

9. Having considered all the above, the trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the same, the appellants are before this Court with this Criminal Appeal.

10. In the evidence of DW.1, he has stated that he was a Ward Counsellor in Maligampattu Village, he has further stated no such occurrence had happened as stated by PW.1, since PW.3 is having an enmity with the accused, due to the inducement made by PW.3, false case has been foisted against the accused.

11. Heard, M/s.K.Gandhi Kumar, the learned counsel appearing for the appellants and Mrs.T.P.Savitha, Government Advocate (Crl.side) appearing for the respondent and perused the materials available on record.

12. The learned counsel appearing for the appellant would contend that the date on which the alleged occurrence is happened was altered in the FIR, the said alteration is nothing, but the material alteration. Further, he would contend that in order to prove the charges framed against the accused, except the evidence given by PW.1, the other witnesses examined on the side of the prosecution did not support the evidence of PW.1. Further, the evidence given by PW.1 has not supported through the medical evidence. He further more submit that against the Rule 7(i) of SC/ST Atrocities Act, the Investigation Officer filed a final report in this case. According to him, the conviction and sentence awarded by the trial Court is liable to be set aside.

13. Per Contra, The learned counsel appearing for the respondent would submit that the evidence given by PW.1 is cogent and convincing one. According to him, interference is not necessary in the conviction and sentence awarded by the trial Court.

14. Considering the submission with regard to the alteration made in the FIR, which is the earliest document marked as Ex.P8, in this case. It was found as per the entries made, the same has been prepared on 26.08.2008 at about 15.30 hours. On the other hand, as per the evidence given by PW.1, the

occurrence had happened on 16.08.2008 at about 17.00 hours. Now, on going through the complaint lodged by PW.1, it will reflect that the same was received by the Police Officers on 17.08.2008 (i.e) next day to the occurrence. The endorsement made by the police officer in the complaint approves the evidence given by PW.1, with regard to the lodging of complaint before the police.

15. After receiving the complaint, a file was opened in CSR No.246 of 2008 for enquiry, subsequently, without any enquiry, the case has been registered after ten days from the date of occurrence on 26.02.2008. In this regard, the details of enquiry made by the Police Officers in CSR.No.246 of 2008 is not produced before the trial Court. No doubt, the averments made in the complaint establishes the cognizable offences under the provision of SC/ST Act. So, it is the duty of the Police Officer to register the case immediately after receiving the complaint. But, in this case, no such action was initiated by the police officer except to receiving the complaint from PW.1.

16. In this regard, PW.9, the then Sub Inspector of Police, who is the author for the F.I.R has stated in his cross examination as, in Ex.P1 the date was altered as 17.07.2008. Further, he admitted the signature of the Head Constable also altered. Accordingly, the evidence of PW.9, disclosed that the complaint given by P.W.1 have not been received by PW.9, further the person who received the complaint has not been examined in the trial Court as a witness to prosecution. Accordingly, it was presumed that, the genuineness of the first information report is doubtful. The said situation creates a doubt as whether the present case has been registered according to the version of PW.1 or not. There by, the sole testimony of PW.1, in respect to lodging of complaint is not wholly reliable one.

17. Further more in the trial Court, in support of the evidence given by PW.1, the eye witnesses examined on the side of prosecution has not supported the case in any manner. So, convicting the accused solely on the basis of the evidence given by PW.1, is not justifiable.

18. Further, the learned counsel appearing for the appellant made a submission before this Court that as per Rule 7 (ii), the investigation for the offences under the provisions of SC/ST Act have to be completed within the specified period. But in this case the said procedure is violated by the Investigation Officer, which also dilutes the case of prosecution.

19. On going through the evidence given by PW.10 on 30.08.2008, he took the case for investigation. But, he laid the charge sheet only on 27.01.2009. Accordingly, the final report in this case has not been filed within a period of two months. In the said circumstances Rule 7 (ii) of SC/ST Rules reads as follows:

"[(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)]"

20. Now, on going through the evidence given by PW.10 with the said rule, the Investigation Officer has violated the procedures prescribed thereof.

21. Hence, this Court finds that the final report in his case has been laid against the provisions of 7(ii) of SC/ST/rules.

22. Now on going through the judgment rendered by the trial Court, it is clear that the above aspects have not been considered perspectively.

23. In view of the above reasons, the Criminal Appeal shall stand allowed. The conviction and sentence passed by the learned Special Judge in S.C.No.124 of 2009, on the file of the learned Special Sessions Court constituted under scheduled caste and scheduled tribes (Prevention of Atrocities) Act 1989., dated 14.09.2010, is hereby set aside. The Appellants/accused are acquitted of all the charges. Fine amount, if any, paid shall be refunded to the appellants. Bail bonds, if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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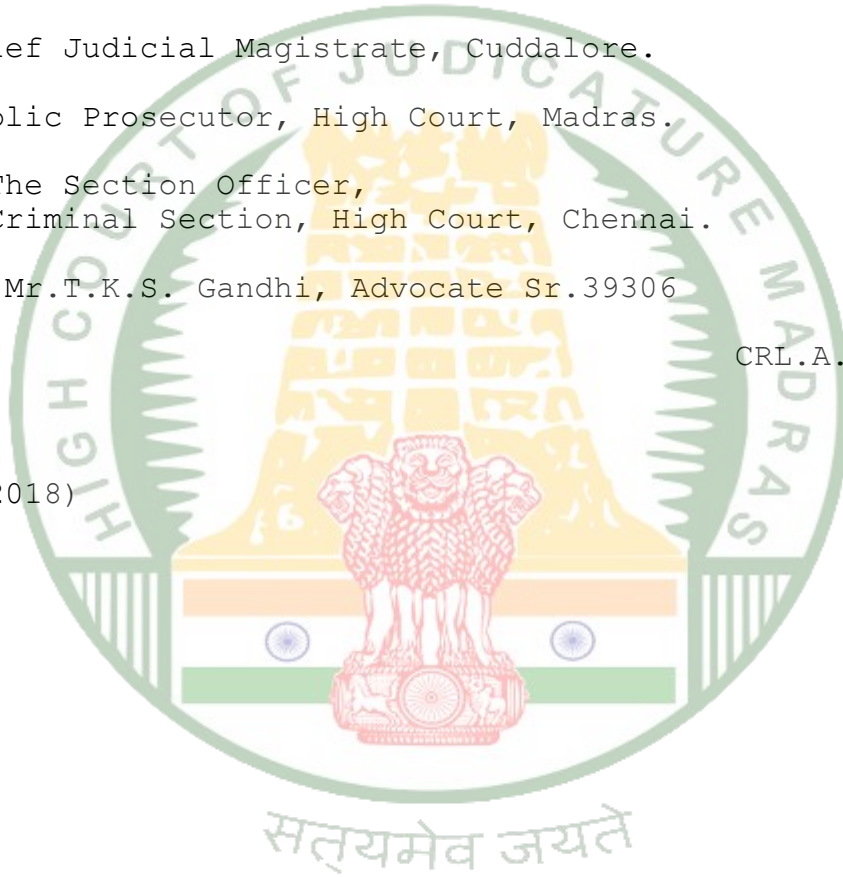
1. The learned Special Sessions Court constituted under scheduled caste and scheduled tribes (Prevention of Atrocities) Act 1989.
2. The Deputy Superintendent of Police, Kadampuliyur Police Station, Cuddalore District.
3. The Judicial Magistrate, No.II, Panruti.
4. The Chief Judicial Magistrate, Cuddalore.
5. The Public Prosecutor, High Court, Madras.

Copy to: The Section Officer,
Criminal Section, High Court, Chennai.

+ 1 cc to Mr.T.K.S. Gandhi, Advocate Sr.39306

CRL.A.583 of 2010

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