

Bail Slip

The Appellant herein/Accused viz., E.Rasaiyan (A3), S/o.Kadambur was directed to be released on bail as per order of this Court dated 10.11.2010 made in Crl.MP.No.1/2010 in Crl.A.No.675/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.675 of 2010

E.Rasaiyan

...Appellant/A3

Vs

The State Rep. by
The Inspector of Police,
Kedar Police Station,
Villupuram Taluk,
Villupuram District.
Crime No. 61/2009

...Respondent/Complainant

Prayer: Criminal Appeal filed under Sections 374(2) of the code of Criminal Procedure, against judgment in S.C.No.301 of 2009, dated 06.10.2010, passed by the learned Principal District and Sessions Judge, Special Court, Villupuram.

For Appellant : Mr.K.Balu

For Respondent : Mr.G.Raman
Govt. Advocate (Crl.side)

J U D G M E N T

The appellant is the third accused in S.C.No.301 of 2009 on the file of the principal District and Sessions Judge, Villupuram. Along with two more accused, he stood charged for the offence under Sections 341, 294, 326, 506(i) IPC and 3(i)(x) of SC ST Act by the judgment dated 06.10.2010, the trial Court convicted him under Sections 325, 506(i) IPC and 3(i)(x) of SC ST Act. Further, the trial Court sentenced him as follows:-

Sl.No	Offence	Period of Punishment
1.	U/s.325	Sentenced to undergo three years imprisonment with fine Rs.10,000/-, in default six months Rigorous Imprisonment.
2.	U/s.3(i) (x) of SC ST Act	Sentenced to undergo two years rigorous imprisonment with fine of Rs.20,000/-, in default six months rigorous imprisonment.
3	U/s. 506(i)	Sentenced to undergo simple imprisonment for six months with fine of Rs.1000/-, in default to undergo 2 months simple imprisonment.

Challenging the said conviction and sentence the appellant is before this Court with this appeal.

2. The case of the prosecution is as follows:

P.W.1 Arunlalgiri was residing in vengathur. He belongs to the community of Hindu Adi Dravidar recognized as scheduled caste. The appellant and other two accused in this case, belongs to the community of Hindu Vanniar. On 14.05.2009 at about 12.00 p.m. When, P.W.1 driven his two wheeler from Surapattu to Vengathur, near Murugan temple in Vengathur, out of previous enmity arising in the Local Body Election, all the accused in this case intercepted the P.W.1 and abused by referring his caste name. In the course of the same transaction the present appellant and one Kumar by using the wooden log and attacked on the left ear of P.W.1. Further, he made law thread to P.W.1.

3. The said occurrence have witnesses by P.W.3 to P.W.5. During the time of occurrence P.W.3 to P.W.5 who are all present in the occurrence place, interfering with the quarrel happened between the accused and the P.W.1 and attempted to specify the dispute. Subsequent to the occurrence, P.W.1 went to the Kedar Police Station and lodged a complaint under Ex.P1. After receiving the complaint the police officer who present in the police station, make arrangements for sending P.W.1 to the hospital. P.W.6 Dr.Manivannan when he was working as a Doctor in Villupuram Government Medical College Hospital. On 14.05.2009 at about 05.15 p.m. He treated P.W.1 for the injuries sustained by him. During the time of examination he found the folowing injuries:

- (i) swelling of 3 X 1 cm in the left side of the upper lip.
- (ii) contusion of 4 X 2 cms in the right cheek
- (iii) pain and blocking sensation in the left ear.

4. According to him, the 1st and 2nd injuries are simple in nature. 3rd injury sustained by P.W.1 is grievous in nature. In this regard, he issued a wound certificate under Ex.P.4.

5. In the mean while, on receipt of the complaint from P.W.1 one Mani the Special Sub Inspector of Police Kedar Police Station, registered a case in Crime No.61 of 2009, under Section 341, 294(b), 323, 506(ii) IPC and 3(i)(x) of SC ST Act. Ex.P5 is the printed First Information Report. After the registration of the case, he made arrangements for sending the copy of the First Information Report to the Deputy Superintendent of Police for initiating investigation. On 14.05.2009 P.W.7 Rajendran the then Deputy Superintendent of Police, Chenji received the copy of the First Information Report. In the same time, the Superintendent of Police, Villupuram issued a proceedings to P.W.7 for investigating this case. Accordingly, P.W.7 took up the case for investigation and went to the scene of occurrence, in the presence of P.W.5 Manika Raj and one Saravanan, he prepared an observation mahazar under Ex.P3. After, he drawn a rough sketch under Ex.P6. Thereafter, he examined the witnesses and recorded the statements. Finally, he sent the requisition to P.W.2 Rajendra Doss for issuing the community certificate in respect to P.W.1 and to the accused.

6. On receipt of the requisition to P.W.2 the then Thasildar, Villupuram issued a community cetificate under Ex.P2. In which, he certifies that all the accused belongs to the community of Vanniar. Further, the issued a certificate stating that P.W.1 belongs to the community of Hindu Adi Dravidar recognized as a scheduled caste. After, receiving the certificate issued by P.W.2, P.W.7 examined the Doctor and received the wound certificate. On completion of investigation he came to the positive conclusion that, the appellant and other accused in this case, committed the offence under Sections 341, 294, 323, 506(ii) IPC r/w 3(i)(x) of SC ST Act and there upon he filed a charge sheet for the same offence.

7. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. For which, all the accused pleaded not as guilty. In order to prove their case. On the side of the prosecution 7 witnesses were examined as P.W.1 to P.W.7. Further, 6 documents were Exhibited as P1 to P6.

8. Out of the said witnesses P.W.1 Arunlalgiri is the victim in this case. He has stated that on 14.05.2009 at about

12.00 noon, when he was driven his Motor cycle near Murugan temple Vengathur. The appellant and other 2 accused intercepted and there after, abused by referring his caste name. Further he has stated that, in the occurrence the appellant and one Kumar by using the wooden lock attacked the injured on his left ear. According to him, P.W.3, P.W.4, one Karpaga Raj and Ramalingam are the witnesses of the occurrence. He has stated that, after the occurrence, he immediately rush to the kedhar Police Station and lodged a complaint.

9. P.W.2 Rajendra Doss is the then Thasildar, Thirukovilur. He has stated that, on receipt of the requisition letter given by P.W.7, he issued community certificate to P.W.1 and to the accused. According to him, P.W.1 belongs to Hindu Adi Dravidar and accused are belongs to Hindu Vanniar. P.W.3 Ilandhavan and P.W.1 Irusan are the witnesses to the occurrence. During the time of the occurrence, the other accused Dhana Sekaran (Now Acquitted) assaulted P.W.1 on his cheek. Further they have stated the appellant and other one accused Paneer Selvam (Now Acquitted) by using the wooden lock assaulted the P.W.1 on his left ear. Further P.W.4 has stated that all the accused abuses P.W.1 by referring caste name. P.W.5 Saravanan is residing in Vengathur village. He has stated that on 14.05.2009 at about 04.00 p.m., P.W.7 came to the occurrence place and prepared an observation mahazar.

10. P.W.6 Doctor Manivannan has stated about the treatment given to the P.W.1 and about the injuries found on him. According to him P.W.1 sustained grievous injuries. P.W.7 is the Deputy Superintendent of Police has stated about the details of investigation and filing of final report.

11. With reference to the incriminating materials adduced, on the side of the prosecution. The appellant and other two accused were examined under Section 313 Cr.P.C. For which, they denied the same as follows. Further they did not choose to examine any of the witnesses are not marked any documents on his side.

12. Having considered all the above, the trial Court convicted the accused as stated in the first paragraph of the judgment. Challenging the same, the appeals are before this Court with this criminal appeal.

13. Heard Mr.M.K.Balu, learned counsel for the appellant/A3 and Mr.G.Raman, learned Government Advocate (Crl. Side) for the respondent and perused the records carefully.

14. The learned counsel appearing for the appellant would contend that, during the time of investigation, the

Investigation Officer in this case without following the procedure amended under Rule 7 of the SC ST Act, and conducted the investigation and filed a final report it is against the legal principles. In this regard he relied the judgment of this Court delivered in criminal appeal 1076 of 2007 dated 16.02.2016. In the said judgment this Court observed in appeal No.32, is as follows:-

"32 Now considering the above Rule position and the decisions on the point, there cannot be quarrel over the proposition that it is not at all the D.S.Ps. Even Police Officers above him in rank cannot investigate the offences alleged to have been committed under SC & ST (P.A) Act, 1989 unless they are specifically empowered by the Government or by the Superintendent of Police (in case of Metropolitan Cities, the Deputy Commissioner) taking into account their past experience and sense of ability etc."

Further, in para No.17 it was held as follows:

"17 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 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(i)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vitiates."

15. So applying the principles already made by this Court, in this case also the proceedings issued by the Superintendent of Police to P.W.7 for investigating this case is not exhibited. In the course of trial proceedings, on the side of the accused it was subjected that P.W.7 is not authorized by the Superintendent of Police to investigate this case. In the said circumstances, excepting order passed by the Superintendent of Police is very much necessary to know the competence of P.W.7.

Even though, the Investigation Officer has stated in his evidence as, he was authorized for conducting investigation in this case. The non producing the proceedings issued by Superintendent of Police, while indicate whether the Investigation Officer has stated the second evidence before this case.

16. Accordingly, in respect to the offence under Section 3 (i)(x) SC ST Act, the procedure conducted by the Investigation Officer is against the principles of law. In the said circumstances, without considering the said aspect the learned trial Judge convicted the appellant is nothing but erroneous in law.

17. With regard to the conviction and sentence awarded to the appellant under Sections 325 and 506(i) IPC. The learned counsel appearing for the appellant would contend during the time of getting treatment before P.W.6, P.W.1 has stated that, at the time of occurrence, four persons were assaulted him. In the said circumstances, the name of the other person who is involved in the occurrence has also stated by P.W.1 in the complaint itself. But during the time of investigation the trial was proceeded against three persons. Further, on the side of the prosecution no explanation is offered for the delusion of accused Kumar which shows P.W.7 conducted investigation in this case in a proper manner. Thereby, the conviction and sentence imposed upon the appellant is liable.

18. On considering the said arguments, it is true that the complainant P.W.1 made an allegation against four persons, but after taking cognizance, the case was proceeded only against three persons, including the present appellant/A3. In this regard, even before the Doctor P.W.1 had mentioned that 4 persons participated in this occurrence. Moreover, at the time of giving evidence before the trial Court, he specifically stated that apart from the appellant, three other persons assaulted him. Even after recording the said evidence the trial Court has not taken any steps to implead the said Kumar as an accused in this case. Due to the said lapse by the Prosecution Agency, the real picture before the Trial Court has not been shown.

19. In this regard, it is to be noted that as per the charge, during the time of occurrence, the present appellant, after abusing P.W.1, uttering the caste name, assaulted him by using the wooden log and caused injury near the left ear. In this regard, P.W.1 stated in his evidence that only due to the assault made by present appellant and one Kumar, the injury had been caused near the left ear. But P.W.3, who is eye-witness to the occurrence, had not stated anything about the present

appellant. According to him, all the persons present in the scene of Crime, had assaulted P.W.1.

20. Moreover, P.W.4 had stated that the present appellant, by using wooden log assaulted P.W.1 and caused injury near the left cheek. Even though, the evidence given by P.W.1 is corroborated by the local evidence, and with regard to the person who attacked P.W.1 near the left eye, it is not clearly shown before the Trial Court. In this aspect, the evidence let in by P.W.1, P.W.3 and P.W.4 is absolutely, not against the present appellant. According to their evidence, the said injury may be due to the assault made by one Kumar or through the persons who are all proved to be present in the scene of Crime. The trial Court, without considering those aspects, concluded that the appellant and other accused have committed the offence.

21. I am not in a position to ascertain as to which person is responsible for causing grievous hurt to P.W.1. Even before the trial Court, the charge has not been framed for the offence under Section 34 of IPC.

22. In the light of the above discussion, this Court finds that the prosecution has abruptly and lethargically proceeded with the case in the trial Court. So, the lapses found in the evidence given by P.W.1, P.W.3 and P.W.4 is not diluted by the prosecution. So, without any hesitation, I Hold that the offence committed by the appellant had not been proved beyond reasonable doubt.

23. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused by the trial Court, are set aside. The accused are acquitted of the charges. The fine amount if paid by the accused, shall be refunded to the accused. The bail bond if any executed by the accused, shall stand cancelled.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1.The Special Judge,
The Principal District and Sessions Judge,
Villupuram.

2. The Judicial Magistrate No.2, Villupuram

3. The Chief Judicial Magistrate,
Villupuram (for information)

4. The Superintendent,
Central Prison, Cuddalore

5. The Inspector of Police,
Kedar Police Station,
Villupuram Taluk, Villupuram District

6. The Public Prosecutor
High Court, Madras.

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

+1cc to Mr.K.Balu Advocate SR.NO.50327

MR(CO)
sm:1.11.2018

CrI.A.No.675 of 2010



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