

Bail Slip

The Accused namely Arangasamy, S/O Perumal, was released on bail as per order dated 30/11/2010 in CrI.MP.1/2010, in CrI.A.732/2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.732 of 2010

Arangasamy

... Appellant

Vs

The Deputy Superintendent of Police,
Kumarapalayam Police Station,
Namakkal District.
Crime No.200 of 2009

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the Judgment made in S.C.No.39 of 2010 dated 10.11.2010 by the learned Principal Sessions Judge, Namakkal convicting the Appellant for the offence under Section 3(1)(x) of S.C./S.T. (PA) Act and sentenced him to undergo imprisonment for the period of one year and imposed a fine of Rs.10,000/- and in default of payment of fine to undergo imprisonment for one year, under Section 323 IPC (2 counts) and sentenced him to undergo imprisonment for one year for each count and imposed a fine of Rs.1000/- for each count and in default of payment of fine to undergo imprisonment for one month for each count.

For Appellant : Mr.C.D.Johnson

For Respondent : Ms.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

This appeal is directed as against the conviction and sentence awarded to the appellant on 10.11.2010 by the learned Principal Subordinate Judge, Namakkal. The appellant herein is the first accused in the above said case. In conclusion of trial, the appellant was convicted for the offence under Section 3(1)(x) of S.C./S.T. (PA) Act and awarded punishment to undergo

imprisonment for the period of one year and imposed a fine of Rs.10,000/- and in default of payment of fine to undergo imprisonment for one year. The accused is also convicted under Section 323 IPC (2 counts) and sentenced him to undergo imprisonment for one year for each count and imposed a fine of Rs.1000/- for each count and in default of payment of fine to undergo imprisonment for one month for each count. Against which the appellant filed this appeal.

2. The case of the appellant is as follows :- P.W.1 Thangam is residing at Pallakkapalayam, Santhaipettai. He was employed as driver under the appellant herein from 14.03.2009 onwards. On 16.03.2009, when P.W.1 asked the appellant to pay batta, the appellant abused P.W.1 by named his community as "Vd;lh gwjnahHp xapd; #hg;gpy; te;J gzknfl;fpwhah>" . Thereafter, on the same day, at about 2.30 p.m., when P.W.1 and his wife P.W.2 - Surekha were at their house, the appellant assaulted P.W.1 by using wooden log. Further, the other accused in this case named as Rajkumar (acquitted in the trial Court) assaulted wife of P.W.1.

2.1. The version with regard to the occurrence stated by P.W.1, is supported by P.W.2 to P.W.5. Due to the assault made by the appellant, P.W.1 sustained injury on his head. After the alleged occurrence P.W.1 and P.W.2 went to the Government Hospital, Komarapalayam, in which P.W.10, Dr.Ravi who worked as Assistant Surgeon on 16.03.2009 at about 3.25 p.m., treated P.W.1 and P.W.2 for the injury sustained by them. During the time of treatment, P.W.10, Doctor found that P.W.1 sustained laceration wound of ½ cm on the back side of his head. According to him, the said injury is simple in nature and he issued wound certificate under Ex.P.6. Similarly, he treated P.W.2 Sureka and he found stretched wound in the left forehead of 6 cm, for which, he issued wound certificate under Ex.P.7.

2.2. On the same day at about 8.p.m., P.W.11 Rajendran who was working as Special Sub Inspector, Komarapalayam, received an information about the assault, from the Government Hospital, Komarapalayam and thereafter he went to the hospital and he recorded the statement given by P.W.1 and registered case in Cr.No.200 of 2009 for the offence under Sections 294(b), 324 IPC and Section 3(i)(x) of SC/ST Act.

2.3. Subsequent to the registration of the case, the Superintendent of Police, Namakkal District referred this case to the Deputy Superintendent of Police, since the offence committed by the appellant has to be investigated by the Deputy Inspector of Police, by proceedings in C.No.25/SJ&HR/2009 dated 16.03.2009, for further investigation of this case. The said authority given by the Superintendent of Police, Namakkal

District was marked as Ex.P.9.

2.4. After receiving the case on 16.03.2009 at mid night 1.00 a.m., P.W.12, the then Deputy Inspector of Police went to the scene of occurrence on 17.03.2009 at about 7.00 a.m., and prepared observation mahazar and rough sketch in the presence of independent witnesses and recorded their statements. In continuation of the investigation, on 18.03.2009, P.W.12 arrested the appellant and another one namely Rajkumar. Thereafter, they were remanded to judicial custody.

2.5. After arresting of the accused, P.W.12 sent a request to the Tashildhar of Sangagiri and Thiruchengodu for issuing the community certificate pertaining to P.W.1 and P.W.2 and also for the accused in this case. Thereafter, P.W.12 examined the Doctor, who treated P.W.1 and P.W.2 and after completion of investigation he filed a charge sheet on 24.07.2009.

3. In the trial Court, on the side of the prosecution, 12 witnesses were examined, besides 12 documents were marked as Ex.P.1 to Ex.P.12. After conclusion of trial, the learned Principal Sessions Judge, Namakkal, acquitted the second accused viz., Rajkumar and convicted the appellant/first accused and sentenced him as above, against which the appellant approached this Court by way of this appeal, prayed to set aside the conviction and sentence awarded by the learned Principal Sessions Judge, Namakkal.

4. The learned counsel for the appellant would submit that as per the evidence given by P.W.1, at the time of occurrence, six persons went to the house of P.W.1 and assaulted him. On the other hand, the charge sheet has been laid against two persons only. On elimination of other persons in this case, no reason has been put forth by the prosecution. Thereby, the said lacuna creates reasonable suspicion over the case of the prosecution. Accordingly, the order passed by the trial Court is liable to be set aside and the learned counsel for the appellant prayed to allow this appeal.

5. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that on going through the averments made in the complaint, which was marked as Ex.P.1, it is seen that on 16.03.2009 at about 14.30 hours, the alleged occurrence had happened. The said time and manner of offence committed by the appellant and other accused was clearly stated by the de-facto complainant. At the time of examination of P.W.1, the evidence put forth by P.W.1 is corroborated with the evidence of his wife i.e, P.W.2 and other independent witnesses P.W.3 to P.W.5.

5.1. Now on going through the charges framed against the appellant, which is for the offence under Section 3(1)(x) SC/ST Act and 323 of IPC. More over, on going through the judgment rendered by the trial Court, the trial Court observed that there are minor contradictions, found in the eyewitnesses and it would not spoil the case of the prosecution.

6. Heard, Mr.C.D.Johnson, the learned counsel appearing for the appellant, and Ms.T.P.Savitha, learned Government Advocate (Crl. side), and perused the available records.

7. On considering the submission made by the learned counsel for the appellant, it is true that in the chief examination, P.W.1 stated that at the time of occurrence four persons along with the appellant came to their house and assaulted him. Thereafter in the cross examination, P.W.1 stated that six persons were participated in the occurrence. Further, P.W.2 in her cross examination has stated that five persons were participated in the occurrence. More over, they have stated before the Doctor, with regard to the number of persons assaulted, that 5 and 6 persons have assaulted. But, there is no reason to lodge a complaint against the appellant and the other accused only. For which, P.W.1 has stated in his cross examination that he is having prior enmity with the appellant with regard to money dispute.

8. The second contention raised by the learned counsel for the appellant is that as per the evidence put forth by the prosecution, the case has been registered not in accordance with law. In this regard, P.W.11, the Sub Inspector of Police, deposed that on 16.03.2009 at about 8.00 p.m., after receiving the intimation from the Government Hospital, Komarapalayam, he went to the Hospital and recorded the statement from P.W.1. Further he stated that only after recording the statement from P.W.1, the present case has been registered. In this regard, P.W.2 Surekha deposed in her evidence that immediately after the occurrence, the police authorities came to the scene of occurrence and obtained signature from her husband. According to the said evidence, the statement from P.W.1 was recorded by the Police officials immediately after the occurrence. But the Investigating Officer, in this case, has not stated any thing about the first statement recorded from P.W.1. So, the said contradiction also creates doubt as to whether the alleged occurrence was happened as stated by the prosecution or not.

9. Thirdly, on going through the evidence given by P.W.3 and P.W.4, who are the eye witnesses to the alleged occurrence, the appellant and other accused in this case were handed over to the police officials immediately after the occurrence. In this regard, P.W.12, the Deputy Superintendent of

Police deposed in the chief examination that only on 18.03.2009, the appellant and the other accused were arrested by the police. If the appellant and other accused were handed over to the police on the same day, it is impossible to arrest the appellant on 18.03.2009, which also creates doubts at what time and in what way the appellant herein was arrested by the Investigating Officer.

10. More over, on going through Ex.P.8 - First Information Report, this case has been registered on 16.03.2009 at about 14.30 hrs. As per the evidence of P.W.12, the charge sheet has been filed in this case on 24.07.2009, which shows that the investigation exceeded two months from the date of the registration of the case, which is against the Rule 7(2) of S.C./S.T. Act. So, the investigation in this case also not completed in accordance with law laid down in the Act.

11. Finally, on going through the evidence of P.W.8-R.Kuppusamy, who was working as Tashildar, Thiruchengodu that he had issued community certificate that P.W.1 belongs to Hindu Adi-dravida. But on the other hand, on going through the evidence given by P.W.1 and P.W.2, it is seen that during the time of occurrence, the appellant abused them by saying his caste name as "Vd;lh gwjhnahHp". So the appellant herein had not been saying actual caste name of P.W.1, during the time of occurrence, which is also against the case of the prosecution.

12. In the light of the above discussions, this Court comes to the conclusion that at the time of pronouncing judgment, the trial Court had not discussed the manner of registration of the case and the other facts and circumstances as mentioned above. Thereby, the order passed by the trial court is liable to be set aside and the appeal deserves to be allowed.

13. In the result, the Criminal Appeal shall stand allowed. The conviction and sentence imposed by the learned Principal Session Judge, Namakkal in S.C.No.39 of 2010, dated 10.11.2010, is hereby set aside. Appellant/accused is acquitted of all charges. Fine amount, if any paid, shall be refunded to the appellant forthwith. Bail bonds, if any executed, shall stand cancelled.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Namakkal.
2. The Public Prosecutor,
High Court, Madras.
3. The Deputy Superintendent of Police,
Kumarapalayam Police station,
Namakkal District.

Cr1.A.No.732 of 2010

NRI (CO)
GSP (25/07/2018)



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