

Bail Slip

The Appellant herein /accused viz SATHISH @ CHINNAPAYYAN S/o MASILAMANI was directed to be released on bail as per order of this court dated 20/12/2010 made in CRL.MP.NO.1/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.07.2018
PRONOUNCED ON : 27.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.768 of 2010

Sathish @ Chinnapayyan
S/o. Mailamani

... Appellant

Vs

The State Rep by
The Deputy Superintendent of Police,
Kanchanoor Police Station, Villupuram District.
Crime No.257 of 2004

... Respondent

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment and sentence passed by the learned Principal District and Sessions Judge, Villupuram District, Villupuram in S.C.No.119 of 2005 on 05.01.2010.

For Appellant : Mr.L.Baskaran

For Respondent : Ms.M.Prabavathi Rameshram
Additional Public Prosecutor

J U D G M E N T

This appeal is preferred by the appellant as against the judgment of conviction and sentence passed in S.C.No.119 of 2005 dated 05.02.2010 conviction and sentencing the appellant to pay a fine of Rs.300/- in default in payment of fine to undergo simple imprisonment for a period of one week for the offence under Section 341 of IPC; and to undergo one year simple imprisonment and fine of Rs. 5,000/- in default of fine to undergo simple imprisonment of six months for the offence under Section 506(1) of IPC; and to undergo two years rigorous imprisonment and pay a fine of Rs.10,000/- in default of fine to undergo six month simple imprisonment for the offence under Section 3(1)(xi) SC/ST Act.

2. The case of the prosecution is that on 17.12.2004 at about 4.00 p.m., P.W.1 Vijayalakshmi belong to Schedule Caste was grassing her cattle at Samedu

Village near Kuruvikaran odai in the land belong to one Rajendiran. The accused pulled her hand and compelled her to kiss him and also pulled her skirt and jacket. Further, the accused also threatened her with dire consequences, if she not come to have sexual intercourse at sugar cane land. P.W.1 further submitted that at the time of occurrence no one was there and while some were crossing the said place and after seeing them, the accused flew away from the place of occurrence. She informed the same to her mother. Thereafter, they went to the owner of the land one Rajendiran and informed about the occurrence. After they informed the said occurrence to the head of the Panchayath of the said village and lodged complaint before the Kanjanur Police Station, which was marked as Ex.P.1 and also handed over her skirt and jacket, produced as M.Os.1 and 2. She was examined as P.W.1. P.W.2, the Special Sub Inspector of Police received the complaint from P.W.1 and registered the same in Crime No.257 of 2004 for the offence under Sections 354, 506(1) IPC r/w Section 3(1)(xi) of SC/ST act and the First information Report was marked Ex.P.2. The offence is being enquired by the Deputy Superintendent of Police, it was sent to P.W.9 for investigation.

3. P.W.3, the mother of the victim P.W.1, after hearing the incident happened to P.W.1, approached the land owner Mr.Rajendiran and also head of the panchayath and no positive action and as such they went to police Station and lodged complaint. P.W.4, independent witness turned hostile. P.W.9, took up the case of the investigation and filed charge sheet as against the accused for the offence under sections 341, 506(i) IPC and 3(1)(xi) SC/ST (PA) Act on 09.05.2005. When, the appellant was questioned under Section 313 of Cr.P.C., he denied the charges, pleaded not guilty and claimed trial.

4. In order to prove the guilt of the appellant, the prosecution examined P.W.1 to P.W.9 and marked Ex.P.1 to Ex.P.5 and produced M.O.1 and M.O.2. After affording opportunity of hearing to the parties, the trial Court convicted and sentenced the appellant as afore mentioned. As against which, the present appeal has been preferred by the appellant.

5. The learned counsel appearing for the appellant would submit that there was a delay in lodging the complaint. Admittedly, the occurrence was took place on 17.12.2004 and the complaint was lodged only on 19.12.2004 and the prosecution failed to explain the delay caused in registering the FIR. More over, no one has spoken about the date of occurrence and no specific date was mentioned in the complaint as well as the FIR.

Therefore, the prosecution failed to prove the case beyond any doubt against the accused. Immediately after the occurrence, P.Ws.1 and 2 went to the owner of land Mr. Rajendiran and head of the Panchayath and only thereafter they went to Police Station to lodge complaint. The prosecution did not examine, the said Rajendiran and head of the panchayath and as such there was no such panchayath and the delay is not at all explained by the prosecution.

6. Further the entire case of the prosecution vitiated, since P.W.9, the Investigating Officer took up the investigation on 23.12.2004 and he filed the charge sheet only on 09.05.2005. As per the SC/ST (PA) Act, Rule 7(2), the investigation has to be completed within a period of 30 days. In the present case, he took nearly five months to complete the investigation, as such the entire case of the prosecution cannot be sustained. In fact, the complaint was received on 19.12.2004 by P.W.8 and the same was not registered on the same day. The complainant was issued only C.S.R.No.320 of 2004 and only on 22.12.2004 it was registered. When there is a specific complaint mentioning the name of the accused and overtact against the accused, what prevented P.W.8 to register a case that too lodged for serious offence. Therefore, the prosecution failed to prove the case and prayed for acquittal of the accused.

7. On the other hand, Ms.M.Prabavathi Ganeshram, learned Additional Public Prosecutor appearing for the respondent/Police would vehemently oppose the arguments of the learned counsel appearing for the appellant and submit that the delay in lodgment of complaint was promptly explained by the prosecution and in the case against the women that too the offence in serious nature, the delay is immaterial and it cannot be affected the case of the prosecution and sought for confirmation of conviction and sentence.

8. Heard the arguments advanced by Mr.L.Baskaran, learned counsel appearing for the appellant and Ms.M.Prabavathi Ganeshram, learned Additional Public Prosecutor appearing for the State and perused the materials placed before this Court.

9. It is seen from the records, P.W.1 deposed that the complaint was lodged only after three days from the date of occurrence. Further she deposed that she never had seen the accused and she did not know about the community of the accused before the occurrence. She would further state that the accused also did not know about her caste and never whispered about that the accused

abused her by using her community name. P.W.3, the mother of the complainant deposed that they approached one Rajendiran and head of the panchayath before lodging the complaint and there was no positive action, as such they decided to lodge complaint, before the police station.

10. Unfortunately, no one was examined to prove the said avernments and as such no proper explanation was given for the delay in lodgment of complaint and also there was no proper explanation by the prosecution in respect of the delay in registering the First Information Report, since the complaint was lodged on 19.12.2004 and the same was registered only on 22.12.2004. Further admittedly, the entire case has been taken up for investigation by P.W.9 on 23.12.2004 and he filed charge sheet only on 09.05.2005 and he took nearly five months for investigation. Rule 7(1) and (2) of SC/ST (PA) Act reads as follows :-

"7. Investigating Officer.-(1) An offence committed under the Act shall be investigated by a Police Officer not below the rank of a Deputy Superintendent of Police. The Investigating Officer shall be appointed by the State Government/Director General of Police/ Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time

(2) The Investigating Officer so appointed under sub-rule (1) shall complete the investigation on top priority basis within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police to the State Government."

11. The learned counsel appearing for the appellant relied the judgment of this Court reported in "2015(2) MWN Cr. 628 - Periyasamy Vs. State" which reads as follows :-

36. As per Rule 7(2), the investigation has to be completed within 30 days. Now in this case PW-15 took up his investigation on 25.4.2007. He has filed the Final Report before the concerned Court only on 10.9.2007. It is far beyond 30 days. The Act gave

him 30 days, but he took more than 3 months to complete the investigation.

37. In view of the large scale atrocities on vulnerable peoples on account of caste discrimination and in pursuance of Constitutional mandate, SC&ST (P.A.) Act, 1989 was passed. Thereafter, after 6 years in order to have effective implementation of the Scheme under the Act in exercise of its Rule making power conferred under Section 23 of the Act, the Government framed the Rules, namely, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and like any other Penal Statute which creates offence although the general procedure for investigating the offences have been delineated in the Old Code of Criminal Procedure, 1898 and also in the new Code of Criminal Procedure, 1973 certain distinct provisions have been made in SC&ST (P.A.) Act and also in the Rules framed thereunder.

38. One distinctive feature is that in Rules 7(1) and 7(2), the Government in its wisdom considered that in order to have effective implementation of the Act and to put an end to offences arising out of Caste discrimination and as there is possibility of false implication and to prevent one sided investigation, to prevent any cover-up operations, to prevent any unfair investigation and to ensure fair investigation, it has engrafted Rule 7(1) and also decided to entrust the investigation to certain higher level Officers, namely, Police Officer not below the rank of D.S.Ps. and further it has been specifically made that such Officer must be an Officer having the required past experience and also of good stature and fiber. Such a sanguine provision has been made in the said Rule itself."

Therefore, this violation of Rule 7(1) of SC/ST (PA) Act vitiates the entire criminal proceedings and those the principles laid down in the said case squarely applied to the facts of this case.

12. Further it is just and necessary to have the provisions under Section 3(1)(xi) of SC/ST (PA) Act which reads as under :-

3(1)(ix) assaults or uses force to
any women belonging to a schedule caste
or a scheduled tribe with intent to
dishonour or outrage her modesty;

In accordance with the above provision, it is clear that the woman should be belonging to schedule caste or schedule tribe and the accused, with an intention to dishonour the woman belonging to schedule caste or schedule tribe, outrage her modesty by assaulting or using any force. Such ingredients of the provisions have to be proved beyond reasonable doubt and it has to be established by the prosecution in order to convict the accused. Therefore, it is just and necessary to ascertain whether the accused having the knowledge that P.W.1, the victim girl belongs to schedule caste/schedule tribe and therefore with such intention to dishonour or outrage her modesty, he has assaulted her or used any force. Therefore, merely proving that the victim girl belongs to SC/ST community and the accused belongs to some other caste is not sufficient. Furthermore, it has to be established that with an intention to outrage the modesty of the girl knowing that she belongs to SC/ST, which is necessary ingredient to be established in order to attract the said provision, the knowledge of the accused that the victim girl belongs to SC/ST should be established by the prosecution. In this background, while looking at the evidence of witness P.W.1, victim girl, as stated supra, she did not know about the accused before the occurrence and only after three days she came to understand the name of the accused. Further she did not know about the caste or community of the accused. No one has spoken about the knowledge of the accused in respect of community of the victim girl. In the absence of such ingredients of that provision, it cannot be stated that the prosecution has proved beyond reasonable doubt that the accused has committed the offence under Section 3(1)(xi) of the SC/ST Act.

13. In respect of the charges under Sections 341 and 506(i) of IPC the prosecution proved the case as against the accused. Thus, the conviction and sentence for the offence under Section 3(1)(xi) of SC/ST Act is set aside and the conviction for the offence under Sections 341 and 506(i) of IPC is confirmed. In respect of the sentence for the offence under Sections 341 and 506(i) of IPC, the learned counsel appearing for the appellant submitted that the appellant was incarcerated for 341 days so far, from the date of his arrest till the suspension of his sentence by this Court. Considering the

above facts and circumstances of this case, this Court is of the considered opinion that already undergone period of sentence would suffice for the sentence imposed for the offences under Sections 341 and 506(i) of IPC.

14. In fine, the appeal is partly allowed and the accused is ordered to set free. Fine amount, if any paid, in respect of the offence under Section 3(1)(xi) of SC/ST Act shall be refunded to the appellant forthwith.

Sd/--

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Special court,
The Principal District and Sessions Judge,
Villupuram District, Villupuram
2. The Deputy Superintendent of Police,
Kanchanoor Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.
4. The Superintendent,
Central Prison,
Cuddalore.

+1 CC TO MR.L.BASKARAN Advocate SR.NO. 51515

JUDGMENT IN
CRL.A.768 OF 2010

vsnII(CO)

ASK(14/08/2018)

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