

Bail Slip

The Petitioner/Accused, namely 1. Murugesan 2. Chinnadurai 3. Jayaraman were released on bail as per order of this Court dated 14.08.2013 in CRL MP.NO.1/13 IN CRL A.NO.557/2013 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.12.2018

DELIVERED ON: 25.01.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.557 of 2013

1. Murugesan M/A 39
S/o Thandavarayan

2. Chinnadurai M/A 37
S/o Thandavarayan

3. Jayaraman M/A 35
S/o Thandavarayan

.. Appellants

Vs.

State represented by
The DSP,
Kallakurichi Sub Division,
Villupuram district.

..Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 24.07.2013 in S.C.No.181 of 2010 on the file of the Special Judge (Principal Sessions Judge), Villupuram Sessions Division, Villupuram District.

For Appellants : Mr.A.G.Rajan
For Respondent : Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side)

JUDGMENT

This criminal appeal has been preferred seeking to set aside the conviction made by judgment dated 24.07.2013 in S.C.No.181 of 2010 on the file of the Special Judge (Principal Sessions Judge), Villupuram Sessions Division, Villupuram District.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 It is the case of the prosecution that Srinivasan (PW1) belongs to Hindu Adi Dravidar Community vide Community certificate (Ex-P5); on 31.07.2009, around 9.30 a.m., Srinivasan (PW1), along with his wife Kannammal (PW2) and son Manivel (PW3), was working in their fields; their ox was tied to a tree; after some time, Murugesan (A1) let loose the ox and it started grazing on the fields; when this was questioned by Srinivasan (PW1), Murugesan (A1), Chinnadurai (A2), Jayaraman (A3), Muthusamy (A4), Rajiv Gandhi (A5), Chandra (A6) and Vanitha (A7) abused them by referring to their caste name and assaulted them resulting in injuries to Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3); the injured were taken to the Government Hospital, Kallakurichi, where they were examined by Dr.Thirumoorthy (PW6), who issued Accident Register copies (Exs-P2, P3 and P4) and referred them for treatment to the Government Hospital, Salem. On intimation, Jagadeesan (PW12), Sub-Inspector of Police, went to the Government Hospital, Salem and recorded the statement of Srinivasan (PW1); Jagadeesan (PW12), Sub-Inspector of Police, came to the police station and registered a case in Crime No.323 of 2009 on 03.08.2009 under Sections 147, 148, 323 and 324 IPC and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity "the SC/ST Act") against the aforesaid seven appellants.

2.2 Since the case under the SC/ST Act has to be investigated by the DSP, on the orders of the Superintendent of Police, the necessary order (Ex-P15) dated 03.08.2009 was obtained and Arumugham (PW13), DSP, conducted investigation. Arumugham (PW13), DSP, went to the place of occurrence and in the presence of Periyasamy (PW10) and Ponnusamy (PW11), prepared the Observation Mahazar (Ex-P11) and rough sketch (EX-P12). From the place of occurrence, Arumugham (PW13), DSP, seized a weed remover (MO1) and an iron rod (MO2) under the cover of Mahazar (Ex-P13). Arumugham (PW13), DSP, examined the injured and other witnesses. He obtained the Accident Register copies (Exs-P2, P3 and P4) relating to the victims and wound certificates (Exs-D1 and D2) relating to the appellants. He also obtained the community certificate (Ex-P5) from Anbarasan (PW7), Tahsildar, Kallakurichi. Arumugham (PW13), DSP, filed an alteration report (Ex-P14) for including Section 325 IPC. After completing the investigation, Arumugham (PW13), DSP, filed final report in P.R.C.No.19 of 2010, before the Judicial Magistrate, Kallakurichi.

2.3 On the appearance of the seven accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.181 of 2010. The Sessions Court framed charges against the appellants for the offences under Sections 147, 148, 323, 324 and 325 IPC and Section 3(1)(x) of the SC/ST Act. When questioned, the appellants pleaded "not guilty".

2.4 To prove their case, the prosecution examined thirteen witnesses and marked fifteen exhibits and two material objects.

2.5 When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. On behalf of the appellants, Exs. D1 to D3 were marked during the cross-examination of the prosecution witnesses. No witness was examined on the defence side.

2.6 The trial Court, after considering the evidence on record and hearing either side, acquitted A4 to A7 of all charges but convicted and sentenced A1 to A3 as follows:

Appellants	Provision under which convicted	Sentence
Murugesan (A1)	325 IPC read with 3(1)(x) of SC/ST Act	One year rigorous imprisonment and fine of Rs.2,000/-, in default to undergo three months rigorous imprisonment
Chinnasamy (A2)	324 IPC read with 3(1)(x) of SC/ST Act	Six months rigorous imprisonment and fine of Rs.1,000/- in default to undergo three month rigorous imprisonment
Jayaraman (A3)	324 IPC read with 3(1)(x) of SC/ST Act	Six months rigorous imprisonment and fine of Rs.1,000/- in default to undergo three month rigorous imprisonment

2.7 Challenging the conviction and sentence, Murugesan (A1), Chinnasamy (A2) and Jayaraman (A3) are before this Court, in this appeal.

3 Heard Mr.A.G.Rajan, learned counsel appearing for the appellants and Mrs.Kritika Kamal, learned Government Advocate (Crl.Side) appearing for the respondent/State.

4 The facts which have been established beyond doubt are:

(a) Srinivasan (PW1), his wife Kannammal (PW2) and their son Manivel (PW3) belong to Hindu Adi Dravidar community which is a scheduled caste within the meaning of the SC/ST Act.

(b) Murugesan (A1), Chinnasamy (A2) and Jayaraman (A3) are brothers; Vanitha (A7) is the wife of Murugesan (A1); Muthusamy (A4) is a close relative of Murugesan (A1); Rajiv Gandhi (A5) is the son of Muthusamy (A4); Chandra (A6) is the wife of Muthusamy (A4)

(c) Murugesan (A1), Chinnasamy (A2), Jayaraman (A3), Muthusamy (A4), Rajiv Gandhi (A5), Chandra (A6) and Vanitha (A7) belong to Hindu Vanniar community and are caste Hindus.

5 Srinivasan (PW1), in his examination-in-chief, has stated that he belongs to Hindu Adi Dravidar community; the appellants belong to Hindu Vanniar community; Thangaraj is the eldest brother of Murugesan (A1), Chinnasamy (A2) and Jayaraman (A3); he bought Thangaraj's share of the land belonging to the family of the appellants and had sowed turmeric; on 31.07.2009, around 9.30 a.m., he tied his ox under a mango tree in the land and was removing the weeds along with his wife; after some time, when he looked around, he did not find his ox there and it was found grazing the crop in the field; when he asked aloud as to who had untied the ox, Murugesan (A1) abused him by referring to his caste name and questioned him as to why he tied the ox in his land; immediately, Chinnasamy (A2), Jayaraman (A3), Muthusamy (A4), Rajiv Gandhi (A5), Chandra (A6) and Vanitha (A7) gathered there and started abusing him; Murugesan (A1) took a weed remover and hit him on his left hand, due to which, his hand broke; Jayaraman (A3) brought a stick from the nearby motor room and hit him on his back; Chinnasamy (A2) hit him on his right knee and shoulders with a stick; on hearing the commotion, the villagers gathered; two persons viz., Arjuna Mooper (PW4) and Munuswamy took him to the hospital where the police came and recorded his statement (Ex-P1).

6 In the cross-examination, Srinivasan (PW1) was questioned about the purchase of land from Thangaraj and it was suggested to him that the purchase was illegal as the minor children of Thangaraj had share in the land. He admitted that the suit in O.S.No.948 of 2008 filed by him against the appellants was dismissed and the appeal filed thereagainst was also dismissed.

7 Mr.A.G.Rajan, learned counsel for the appellants drew the attention of this Court to the answer given by Srinivasan (PW1) in the cross-examination to the effect that after the incident, he and his wife went to Chinna Salem Police Station and reported the matter to the Sub-Inspector who wrote down the complaint and obtained the signature of his wife. He has further stated in the cross-examination that Chinnadurai (A2) and his mother Anjalai were already taking treatment in the hospital but has added that they caused injuries to themselves with the blade and got admitted to the hospital alleging that he (PW1) had attacked them. When PW1 was asked in the cross-examination as to whether he was aware of the counter case in Crime No.324 of 2009, he denied knowledge of it. Ultimately, it was suggested to him that no such incident had ever taken place and the case has

been foisted by him due to the civil disputes connected to the land, which, he denied.

8 Kannammal (PW2), in her evidence, has corroborated the evidence of Srinivasan (PW1) and has stated that Murugesan (A1) abused them referring to their caste name and assaulted her husband Srinivasan (PW1) with a stick; Jayaraman (A3) hit her husband on his back with an iron rod. She has also referred to the overt act of the other appellants. She has further stated that she was assaulted by Vanitha (A7) and her mother.

9 In the cross-examination, Kannammal (PW2) has stated that after the incident, they went to Kallakurichi Hospital and from there, they went to the Government Hospital, Salem, for treatment. She has further stated that the police came to Kallakurichi Hospital and obtained a statement from her, in which, she affixed her thumb impression. She has also admitted about the litigation pending between her husband Srinivasan (PW1) and the appellants in connection with the property purchased by her husband Srinivasan (PW1) from Thangaraj.

10 Manivel (PW3), son of Srinivasan (PW1) and Kannammal (PW2), has, in his examination-in-chief, stated that while his parents were working in the fields, their ox was let loose; when that was questioned, Murugesan (A1) abused them by referring to their caste name; thereafter, the appellants joined and they started attacking his

parents; Murugesan (A1) beat his father with a stick on the right hand; Chinnadurai (A2) hit his father with a stick; Jayaraman (A3) brought an iron rod from a nearby current box and belaboured his father on the back. He further stated that Vanitha (A7) pulled his mother's hair and pushed her on the ground and assaulted her on her shoulder with a stick. He admitted that Muthusamy (A4) hit him with a stick on his chest and Rajiv Gandhi (A5) hit him with a stick on his shoulder and left leg.

11 In the cross-examination, Manivel (PW3) has admitted that there are civil cases pending between the two families in connection with the purchase of land. When asked about the registration of the case in Crime No.324 of 2009 against him and his father, he pleaded ignorance. It was suggested to him that his father had purchased the property without proper title and when this was questioned by the appellants, the appellants were assaulted by Srinivasan (PW1) and in order to cover it up, the present case has been foisted, which, he denied.

12 Arjuna Mooper (PW4), Ponnusamy (PW5) and Lakshmanan (PW8) who were supposed to be eye-witnesses, turned hostile.

13 Dr.Thirunavukarasu (PW6) has, in his evidence, stated that while he was on duty at Kallakurichi Hospital on 31.07.2009, Srinivasan (PW1), son of Arumugam, was brought by one Rajendran for treatment; on questioning, he stated that around 9.30 a.m., he was assaulted by eight known persons with an iron rod and a stick near the fields of Arjuna Mooper (PW4); on examination, he noted that Srinivasan's (PW1) wrist was swollen and bent and there were injuries on his back, neck and knees; therefore, he referred him to the Government Hospital, Salem, for better treatment and issued the Accident Register (Ex-P2); after taking X-ray of the hand, he has opined that the injured has suffered fracture of Radius bone in his right wrist which is grievous in nature.

14 Dr.Thirunavukarasu (PW6) has further stated that, on the same day, he examined Kannammal (PW2) who had complaint of shoulder pain and pain around her neck; so, he referred her to the Government Hospital, Salem, for further treatment and after obtaining the medical records, he issued the Accident Register copy (Ex-P3) opining that the injury suffered by her is simple in nature; he also examined Manivel (PW3) who had complained of pain in his right shoulder, in the left side of chest and in his knee; he was treated as out-patient and was also referred to the Government Hospital, Salem, for further treatment and his Accident Register copy was marked as Ex-P4.

15 In the cross-examination by the appellants, Dr.Thirunavukarasu (PW6) has stated that on the same day, he examined Chinnadurai (A2) who told him that he was attacked by three known persons with blade, stick and stone at 10.00 a.m. near his house; he noted two abrasions on his back and admitted him as in-patient and after treatment, issued wound certificate (Ex-D1) opining that the injuries are simple in nature; he also examined Anjalai who told him that she was assaulted by three known persons at 10.00 a.m. with stones; she had laceration on her head and complaint of body pain; she was admitted as in-patient and after treatment, he issued the wound certificate (Ex-D2) opining that the injuries are simple in nature. The wound certificates of Chinnadurai (A2) and Anjalai were marked as Exs-D1 and D2 respectively.

16 Anbarasan (PW7), Tahsildar, Kallakurichi, has stated that the appellants belong to Vanniar community and Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3) belong to Hindu Adi Dravidar community which is a scheduled caste. The Community certificate of the Srinivasan (PW1) to Manivel (PW3) has been marked as Ex-P5.

17 Ramasamy (PW9) has stated that four years ago, he saw a fight and he asked the injured to go to the hospital. Beyond that, he has not stated anything. He neither identified the appellants nor the complainant party. In other words, he has not stated anything, other than the fact that the appellants party and the complainant party were fighting.

18 Periyasamy (PW10) and Ponnusamy (PW11) who were witnesses to Ex-P6 and Ex-P7, turned hostile.

19 Jagadeesan (PW12), Sub-Inspector of Police, has stated that on information, he went to the Government Hospital, Salem, on 03.08.2009 and recorded the statement of Srinivasan (PW1), based on which, he registered a case in Crime No.323 of 2009 at 20.30 hours under Sections 147, 148, 323 and 324 IPC and Section 3(1)(x) of the SC/ST Act and prepared the printed FIR (Ex-P10). On the orders of the Superintendent of Police, he handed over the investigation to the DSP.

20 In the cross-examination, he has stated that on the same day, he registered a case in Crime No.324 of 2009 (Ex-D3) under Sections 294-B, 323 and 324 IPC, on the complaint given by Chinnasamy (A2) against Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3). It was suggested to him that this FIR has been suppressed and the case has been foisted on the appellants, which suggestion, he denied.

21 Arumugham (PW13), DSP, has stated in his evidence that the Superintendent of Police issued proceedings dated 03.08.2009 (Ex-P15) under Rule 7(1) of POA Rules, 1995, appointing him as Investigating Officer in Crime No.323 of 2009; he took up the investigation and went to the place of occurrence and prepared the Observation Mahazar (Ex-P11) and rough sketch (Ex-P12); he seized the weed cutter (MO1) and the iron rod (MO2) under the cover of Mahazar (Ex-P13); he examined the local witnesses and went to the Government Hospital, Salem, recorded the statements of Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3); he applied for and obtained the report from Tahsildar on the community of the victims and the appellants; he filed alteration report (Ex-P14) for including Section 325 IPC in the FIR; he examined Dr. Thirunavukarasu (PW6) who treated the victims and obtained the copies of Accident Register (Exs-P2, P3 and P4) and wound certificates and completed the investigation and filed final report before the jurisdictional Magistrate.

22 In the cross-examination, he has stated that the FIR reached the Magistrate on 06.08.2009 and the statement and other documents reached on 28.01.2010. He has admitted that Chinnadurai (A2) and his mother Anjalai were taking treatment in the Government Hospital, Salem, when he went to record the statements of the victims. He has also admitted that on the complaint given by Chinnadurai (A2), FIR was registered and final report was filed before the jurisdictional Magistrate against the victim party.

23 Mr.A.G.Rajan, learned counsel appearing for the appellants made the following submissions:

(a) The police have suppressed the genesis of the case by not making any reference to the case in Crime No.324 of 2009 that was registered against the victims on the complaint given by Chinnadurai (A2).

(b) Srinivasan (PW1) has stated that the police obtained the statement from his wife Kannammal (PW2) and that complaint has been suppressed.

(c) The FIR in his case has been registered only on 03.08.2009 for the incident that is said to have taken place on 31.07.2009 and the FIR has reached the Court only on 06.08.2009 and the other documents had reached the Court only on 28.01.2010.

Hence, Mr.A.G.Rajan, learned counsel appearing for the appellants submitted that a false case has been registered against the appellants.

24 Per contra Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel appearing for the appellants.

25 This Court gave its anxious consideration to the rival submissions.

26 The case of the prosecution rests on the evidence of Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3). On reading of their evidence, it is seen that Srinivasan (PW1) has purchased a portion of the land belonging to the family of the appellants from Thangaraj, the brother Murugesan (A1), Chinnadurai (A2) and Jayaraman (A3), on account of which, there was ill-feeling and animosity between the two families. The appellants are caste Hindus and the victims are Dalits. Motive is a double edged sword which can either propel a party to foist a case on the other or be a cause for the latter to attack the former. In this case, the appellants had not denied their presence at the place of occurrence. It is their case that it was the complainant's group who attacked the appellants party resulting in injuries to Chinnadurai (A2) and Anjalai. What triggered the clash was the un-tying and letting loose of the ox of Srinivasan (PW1). All the three witnesses have stated that the problem broke only after the ox was let loose. It is not the case of the appellants that the complainant group suddenly descended on their land to take possession and in order to resist their aggression, force was used against them. Srinivasan (PW1) was 65 years old and his wife Kannammal (PW2) was around 55 years old when the incident took place. There were only three persons on behalf of the complainant and they were outnumbered by the appellants party. Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3) were taken to the Government Hospital, Kallakurichi at 1.45 p.m. on the same day.

27 Dr.Thirunavukarasu (PW6), Assistant Surgeon, Kallakurichi, has, in his evidence, stated that the injured told him that they were attacked by eight known persons around 9.30 a.m.; Srinivasan's (PW1) wrist was found broken and therefore, the victims were referred to the Government Hospital, Salem, for better treatment, whereas, in the case of Chinnadurai (A2) and Anjalai, Dr.Thirunavukarasu (PW6) has stated that they told him that they were assaulted by three known persons at 10.00 a.m. on 31.07.2009 which clearly shows that both the incidents did not occur simultaneously. Even in the FIR in Crime No.324 of 2009 (Ex-D3), it is stated that Chinnadurai (A2) was assaulted at 10.00 a.m. All these clearly show that the appellants got admitted themselves into the hospital in order to set up a defence. Even according to the appellants, this is not a case and

counter. According to them, the complainant party abused them and Srinivasan (PW1) took a stick and attacked Chinnadurai (A2) and Anjalai.

28 As stated above, Srinivasan (PW1) was 65 years old whereas Chinnadurai (A2) was 22 years old on 31.07.2009. That apart, the appellants party were eight in number and the complainant party comprised only three persons, the youngest being Manivel (PW3) who was 30 years old then.

29 As regards the delay in registration of the FIR, it is seen that the victims were first taken to the Government Hospital, Kallakurichi, from where, they were taken to Salem District which is far away from Kallakurichi. Only after receiving intimation from the Government Hospital, Salem, on 03.08.2009, Jagadeesan (PW12), Sub-Inspector of Police, went there and recorded the statements of Srinivasan (PW1) and registered the case. Thereafter, the FIR was sent to the Magistrate on 06.08.2009 by the police. The fact remains that the injury sustained by Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3) was seen at the earliest point of time by Dr.Thirunavukarasu (PW6), Assistant Surgeon, Kallakurichi, around 1.00 p.m. on the same day.

30 In Ravinder Kumar and another Vs. State of Punjab¹, the Supreme Court has discussed the aspect of delay in the registration of FIR and has held that the delay in lodging FIR is not fatal in every case. In fact, the Supreme Court has further held that just because the FIR has been promptly lodged, that does not mean that the case is genuine and conversely, if the FIR is lodged with delay, the case cannot be said to be a false one.

31 Therefore, the prosecution have proved beyond doubt that Murugesan (A1), Chinnadurai (A2) and Jayaraman (A3) had attacked Srinivasan (PW1) with an iron rod and stick.

32 Coming to the charge under Section 3(1)(x) of the SC/ST Act, Srinivasan (PW1), Kannammal (PW2) and Manivel (PW3) have stated the offending words used by the appellants referring to their caste name.

33 It is no surprise to this Court that Arjuna Mooper (PW4), Ponnusamy (PW5), Lakshmanan (PW8), Periyasamy (PW10) and Ponnusamy (PW11) turned hostile as they belong to the community of the appellants. As regards the evidence of Ramasamy (PW9), on which, much reliance was placed by the learned counsel for the appellants, this Court has already referred to his evidence, as stated above. He has not even stated that the

1 (2007) 7 SCC 690

appellants' group and the complainants' group had clashed. His evidence is of no use to either side.

34 The case in Crime No.324 of 2009 (Ex-D3) is not a counter case to the case in Crime No.323 of 2009 within the meaning of the Police Standing Orders 588-A [New 566 (2)] and therefore, it cannot be stated that the police have suppressed the genesis of the occurrence.

35 Coming to the question of sentence, this Court is indeed surprised to note that the trial Court has not awarded any separate sentence for the offence under Section 3(1)(x) of the SC/ST Act, though a separate charge has been framed. The trial Court has convicted the appellants under Sections 325 read with Section 3(1)(x) of the SC/ST Act. Such conviction is illegal because Section 3(1)(x) of the SC/ST Act is a distinct offence and is not a compoundable offence to be tagged along with the offence under Section 325 IPC.

36 In the facts and circumstances of the case, the sentence passed by the trial Court cannot be said to be excessive warranting interference.

In the result, this appeal is dismissed. The trial Court is directed to secure the appellants for undergoing the remaining period of sentence, if any.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The Deputy Superintendent of Police,
Kallakurichi Sub Division,Villupuram district.
2. The Special Judge (Principal Sessions Judge),
Villupuram Sessions Division,Villupuram District.
3. The Public Prosecutor,
Madras High Court, Chennai - 104.

COPY TO
The section officer,
CRIMINAL Section,High court Madras

+1cc to Mr. A.G.Rajan, Advocate SR.No. 6641

CrI.A.No.557 of 2013

A.SK(20/02/2019)