

Bail Slip

The 1st Appellant/Accused viz., Lakshmi W/o. Govindan (in SC 9 of 2009, dated 19/04/2010 on the file of the Principal Session Court, Villupuram) was directed to be released on bail as per order of this court dated 01/07/2010 made in MP.No.1 of 2010 in CrI.A 360 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.02.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No.360 of 2010

1.Smt.Lakshmi
2.Meena

.... Appellants

Vs

State Rep.by Deputy Superintendent of Police,
Tindivanam Division, Villupuram District,
Crime No.799 of 2008.

.... Respondent

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgement dated 19.4.2010 made in SC.No.9 of 2009 by the Special Judge, Principal Sessions Court, Villupuram.

For Appellants : Mr.N.Suresh

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is filed against the judgement of conviction and sentence, dated 19.04.2010, made in S.C.No.9 of 2009, on the file of the learned Special Judge, Principal Sessions Court, Villupuram, (a) convicting and sentencing the first appellant/A1 for the offence under Section 323 of IPC to pay a fine of Rs.500/-, in default, to undergo two months Simple Imprisonment and for the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to undergo two years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment and (b) convicting and sentencing the 2nd Appellant for the offence under Section 323 of IPC to pay a fine of Rs.500/-, in default, to undergo two months Simple Imprisonment and for the offence under Section 506(i) of IPC, to pay a fine of Rs.1,000/-, in default to undergo three months Simple Imprisonment.

2. The case of the Prosecution has arisen on the basis of the complaint Ex.P1, dated 29.08.2008, given by the victim, P.W.1, Meenakshi, alleging that she belongs to Vettainaicker Kurava Community and that she is the President of Bowda Mahalir Suya Udavi Kuzu, Tindivanam, in which, A1, who belongs to Vanniar Community and A2, who belongs to SC Community, are Members and that due previous enmity between the Appellants and PW.1, regarding a land dispute, on 28.8.2008 at 11.30 a.m., in the meeting, the Appellants/A1 and A2 abused her in a filthy language, by mentioning her community name, assaulted her and threatened with dire consequences. Hence, the Appellants/A1 and A2 were charge sheeted for the offences under Sections 294(b), 323, 506(i) of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The case was taken on file in S.C.No.9 of 2009, by the Special Judge, Principal Sessions Court, Villupuram and also necessary charges were framed. The appellants/accused had denied the charges and sought for trial. In order to establish the guilt of the accused, the prosecution examined as many as eight witnesses as P.W.1 to P.W.8 and also marked Ex.P1 to P6.

4. P.W.1 is the victim, who gave the complaint Ex.P1. P.W.2 is the Tahsildar, Tindivanam, who gave the Community Certificate in respect of PW.1 and the Appellants/A1 and A2. P.W.3 and P.W.4 are the Auditor and Senior Manager of the Bowda Mahalir Suya Udavi Kuzu. P.W.5 is the witness, who attested the Observation Mahazar Ex.P3. P.W.6 is the Doctor, who examined the complainant PW.1 and issued Ex.P4, accident register. PW.7 is the Sub Inspector of Police, who had registered the case in Crime No.799 of 2008 under Sections 294(b), 323, 506(ii) of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. P.W.8 is the Assistant Commissioner of Police, who conducted further investigation and filed the final report against the appellants/accused, under Sections 294(b), 323, 506(ii) of IPC and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. Ex.P1, dated 29.08.2008 is the complaint given, by P.W.1. Ex.P2, dated 31.10.2008, is the report in respect of the community of PW.1 and the Appellants. Ex.P3, dated 29.08.2008, is the Observation Mahazar. Ex.P4, dated 28.08.2008, is the accident report of the complainant P.W.1. Ex.P5, dated 29.08.2008, is the First Information Report. Ex.P6, dated 29.08.2008, is the rough sketch.

6. On completion of the evidence on the side of the Prosecution, the appellants/ accused were questioned under Section 313 Cr.P.C as to the incriminating circumstances found in the evidence of prosecution witnesses and the

appellants/accused have come with the version of total denial and stated that they have been falsely implicated in this case.

7. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found that the appellants/accused guilty and awarded punishments, as referred above, which is challenged in this Criminal Appeal.

8. This Court heard the submissions of the learned counsel on either side.

9. The learned counsel for the appellants/accused has assailed the impugned judgement of conviction and sentence, on the following infirmities, discrepancies and grounds:-

a. The ingredients of Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are not attracted against the first appellant. There is no eye witness to the occurrence. In Ex.P1, nothing has been stated that the incident was witnessed by any other persons, though the occurrence was said to have happened in the presence of more persons and no independent witness has been examined.

b. Ex.P1 is a counter blast to the earlier complaint given by A2 in Cr.No.798/2008, registered against PW.1 under Section 294(b) of IPC. In the complaint, PW.1 had stated that she had fainted and fallen down, except which, nothing had been stated therein and only during the evidence before the Court, for the first time, she had stated about the persons, by name, Murugan and Bharathi, who were examined as PW.3 and PW.4, who are related to PW.1. The evidence of PW.3 and PW.4 is totally contradictory to the evidence given by PW.1.

c. Further, there is also no indication in the complaint, Ex.P1 as to the community of the Appellants. There is also unexplained delay in lodging the complaint Ex.P1, by the complainant.

d. PW.1 itself has stated that there was a previous enmity between them, due to which, PW.1 had given a false complaint against the appellants/accused, by misusing her community. In order to wreck vengeance against the Appellants only, the false complaint has been lodged. Further, non examination of one Devi, sister of PW.1, who admitted PW.1 in the hospital is fatal to the case of the Prosecution.

10. The learned counsel for the appellants/accused would ultimately contend that the impugned judgement of conviction and sentence is against law and that the prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and that the Trial Court is not correct and justified in convicting and sentencing the appellants/accused and hence, the appellants/accused are entitled for acquittal. He would further submit that in a catena of decisions of the Honourable Supreme

Court, practice of giving false complaint, misusing ballsy position of Schedule Castes / Schedule Tribes Act to wreck personal vengeance has been, time and again, deprecated and rely upon the decisions reported in 2011 11 SCC 259 (Asmathunnisa Vs. State of AP), 2008 12 SCC 531 (Gorige Pentaiah Vs. State of AP), CDJ 2018 MHC 7313 (Sekar and others Vs. Deputy Superintendent of Police) and CDJ 2016 MHC 6051 (Manimeglai and others Vs State).

11. The learned Additional Public Prosecutor for the respondent would submit that the first appellant/accused abused PW.1 in a filthy language, using her caste name and also assaulted her within public view and also intimidated her, thereby attracting the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. He would submit that the second appellant, who is also belonging to the Schedule Caste Community joined together with the first appellant and assaulted P.W.1 with a chair and intimidated her and that the Prosecution has proved the charges levelled against the appellants/accused by valid evidence and hence, the trial Court has rightly convicted the appellants/accused, which warrants no interference by this Court.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and carefully analysed the entire evidence available on record and also perused the impugned judgement of conviction, including the relevant provisions of the Act.

13. The question to be decided is as to whether the Prosecution has proved its case beyond all reasonable doubts or not, by cogent evidence and also it is to be seen as to whether there are infirmities, discrepancies and contradictions, as projected by the Appellants/A1 and A2.

14. On perusal of the entire records, it came to light that the case of the prosecution mainly rests on the complaint Ex.P1 given by the complainant, PW.1.

15. It is seen from the complaint, Ex.P1 that the occurrence was stated to have been happened inside the Office premises of the Bowda Mahalir Suya Udavi Kuzu. However, in Ex.P1, PW.1 has not categorically stated about any person, witnessing the incident. But, in her evidence before the Trial Court, PW.1 has deposed that there were some persons present at the place of occurrence.

16. Further, the evidence of PW.1, PW.3 and PW.4, who are related to each other, are totally contradictory in nature, with respect of alleged incident and thereby suggesting that PW.3 and PW.4 could not have been present at the time of occurrence.

17. It is also stated in Ex.P1 about the previous enmity between her and the first appellant regarding certain land. PW.7, Investigating Officer, has deposed that A2 had given a complaint against PW.1, which was registered in Cr.No.798 of 2008. The present complaint Ex.P1 was registered in Cr.No.799 of 2008. Thus, there was a complaint and counter complaint against each other. The present complaint is the subsequent one and counter blast to the earlier complaint given by A2. Hence, there is every possibility of wrecking vengeance against the Appellants by PW.1, due to previous enmity prevailed between them regarding certain land dispute. Hence, it is held that the complaint, Ex.P1 is foisted only as a counter blast to the earlier complaint given by A2.

18. Now, the point to be decided is as to whether the ingredients of offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act are attracted to base conviction on the Appellants.

19. Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, reads as under:-

'3. Punishments for offences of atrocities:- (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

(x) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

20. For an offence under 3(1)(x) of the SC/ST (Prevention of Atrocities) Act, there should be intentional insult or intimidation to a member of SC/ST community in any place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellants to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law. The Prosecution is bound to prove all the ingredients prescribed for the offences beyond all reasonable doubts.

21. This Court in the decision reported in (2002) MLJ (Crl.) 202 (Victor Paul and another vs. State), with regard to the phraseology 'public view' employed in Section 3(1)(x) of SC/ST Act, has observed as under:-

'4. The word 'public view' is not defined in the Act. The dictionary meaning of the word 'public' is 'open to the people as a whole'. The dictionary meaning of the word 'view' is vision or sight as from a particular position. Reading these two meanings together in the context of the words

'public view', it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place within 'public view' or in any other place within 'public view'. In either situation, the essential element that requires to be established is that it was in 'public view'. The word 'public view' in the Section is preceded by the word 'in any place within'.

22. The above said decision reported in (2002) MLJ (Crl.) 202 (Victor Paul and another vs. State) was followed by a recent decision of this Court, dated 22.01.2019, made in Crl.A.No.295 of 1999, wherein it was held that since the alleged occurrence had not taken place within public view, the ingredients of Section 3(1)(x) of SC/ST Act cannot be made applicable and consequently, the judgement of conviction and sentence was set aside.

23. In this regard, even as per the complaint Ex.P1, the incident was stated to have happened in the Office Premises of Bowda Mahalir Suya Udavi Kuzu. Nothing has been stated by PW.1 that the incident was viewed by any other persons. No other public were present at the scene of occurrence. PW.3 and PW.4, who are related to PW.1, are interested persons. The materials on record does not show that the alleged occurrence had not taken place within public view and thus, the ingredients of Section 3(1)(x) of the Act are not attracted against the Appellants.

24. It is also settled position of law that delay in lodging the complaint is also fatal to the case of the Prosecution. In the case on hand, though the incident was stated to have happened on 28.08.2008 at 11.30 a.m. PW.1 had given a complaint only on the next day at 5.15 p.m. that too as a counter blast to the earlier complaint given by A2 against her, which was registered in Cr.No.798 of 2008. The said unexplained delay in lodging the complaint by PW.1 is fatal to the case of the Prosecution.

25. Another glaring infirmity is that in the complaint Ex.P1, PW.1 has simply stated that she had fainted and fallen down and nothing has specifically been stated about any person, viewing the incident. Only during the evidence before the Trial Court, for the first time, PW.1 has stated about the persons, namely, one Murugan and Bharathi, who were examined as P.W.3 and P.W.4. As stated above, PW.3 and PW.4 are related to PW.1 and they are interested witnesses. The evidence of PW.3 and PW.4 is totally contradictory to the evidence given by P.W.1, who have deposed that there were members present in the Office Premises.

However, no independent witness has been examined to attract the ingredients of Section 3(1)(x) of the Act.

26. It is also seen from the complaint, Ex.P1 that in Ex.P1, there is no whisper about the community of the Appellants. It is the case of PW.1 was not herself aware of the community of the second appellant and only at later point of time, it was found that the second appellant belongs to the Scheduled Caste Community.

27. Yet another factor which goes to the root of the Prosecution is that though it has been stated by P.W.1 in her complaint that she was admitted in the hospital by the persons, who were present at the time of occurrence and though, in fact as per the evidence of PW.4, she was alleged to have been admitted by her sister, one Selvi, either any independent witness or the said Devi was not examined to prove the case of the Prosecution, which is also fatal the case of the Prosecution.

28. Time and again, the practice of giving false complaint, misusing ballsy position of Schedule Castes / Schedule Tribes Act to wreck personal vengeance has been deprecated by the Honourable Supreme Court, in a series of decisions.

29. In view of all the above foregoings, this Court is of the view that the Prosecution has not established the guilt on the Appellants/accused beyond all reasonable doubts, by cogent and convincing evidence. Further, in the absence of any material to prove the guilt on the Appellant/ accused, this Court has to necessarily interfere with the impugned judgement of conviction and sentence and consequently, the same is liable to be set aside.

30. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The appellants/accused are acquitted of all the charges levelled against them. The bail bond, if any, executed by the appellants/accused, shall stand cancelled. The fine amount, if any, paid by the appellants/accused shall be refunded to them.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ms/srcm

To

1.The Special Judge, Principal Sessions Court,
Villupuram.

2.The Judicial Magistrate No.I,
Tindivanam.

3.The Chief Judicial Magistrate,
Villupuram.

4.The Deputy Superintendent of Police,
Tindivanam Division,
Tindivanam,
Villupuram District

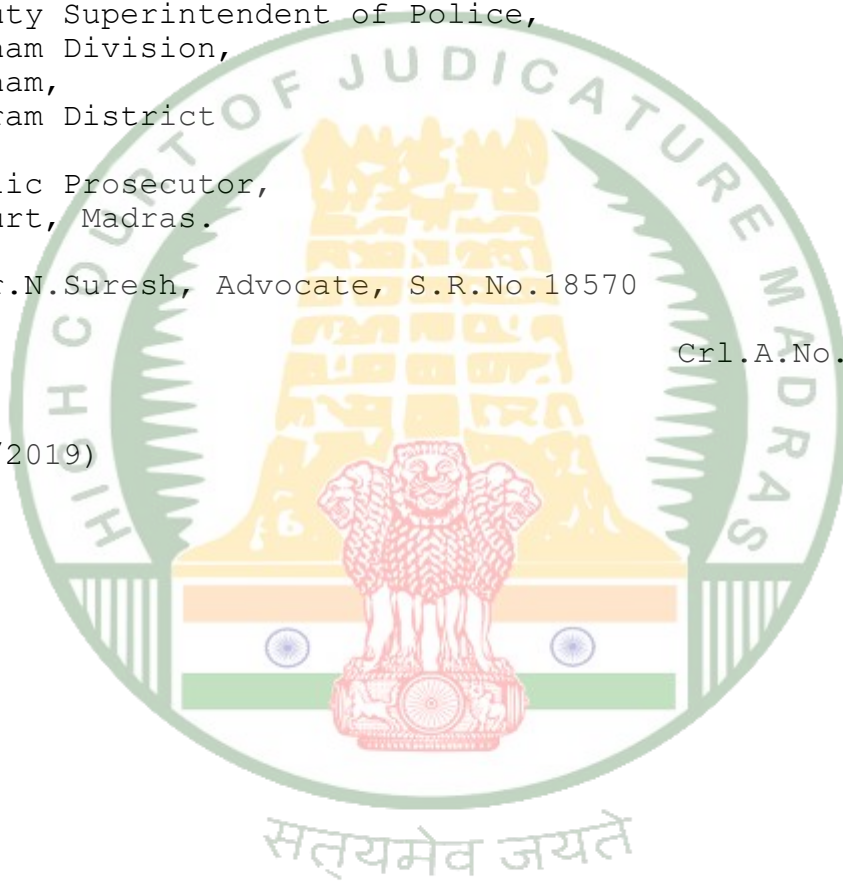
5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Suresh, Advocate, S.R.No.18570

Cr1.A.No.360 of 2010

GP (CO)

RRS (12/04/2019)



WEB COPY