

Bail Slip.

The Appellant herein/Accused namely C.Palanichamy S/o.Chinnasamy aged about 34 years was directed to be released on bail as per order of this Court dated 12.08.2011 made in CrI.M.P. 1/2011 in CrI.A. 511/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.511 of 2011

C.Palanichamy,
S/o.Chinnasamy,
Kopathukaduthottam,
Ukkapatti, Neelampathy Tholampalayam,
Karamadai, Mettupalayam Taluk,
Coimbatore. ... Appellant/A-1

/versus/

State represented by:

The Deputy Superintendent of Police,
Perianayakanpalayam Sub Division,
Coimbatore District. ... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374(2) of Cr.P.C., praying against to set aside the conviction and sentence made in the Judgment dated 14.07.2011 in Spl.S.C.No.18 of 2010 on the file of the Special Judge/Principal District Sessions Judge, Coimbatore.

For Appellant : Mr.K.Rajasekaran

For Respondent : Mrs.Kritika Kamal.P
Government Advocate (CrI.Side)

J U D G M E N T

The Appeal is directed against the judgment of the trial Court holding the appellant guilty for offences under Sections 447 and 506 (ii) of I.P.C and under Section 3(1)(x) of SC/ST Act.

2. The brief facts of the case is that the accused Palanichamy and deceased Sivaraman had land at Tholampalayam

Village, Coimbatore. To reach the land, they were supposed to pass through the settlement of Irular community. The defacto complainant and others were allotted residential tenements by the Government and the lands appurtenant to that were cultivated by the defacto complainant and others. There was some dispute regarding usage of cart Track passing through the settlement. On 19.11.2007, at about 11.00 a.m, the appellant Palanichamy along with Sivaraman trespassed into the land of Velusamy (PW.2) and Rangasamy (PW.3) carrying plantain load in the tractor driven by one Kumar (PW.4). When it was protested by PW.2 and PW.3, the appellant and Sivaraman has abused them using the community name, with intention to insult them and also threatened them that they will finish them if they are prevented from using the land for passage. On 28.11.2007, a written complaint was given by PW.1 (Nanjan), reporting the incident. The complaint was registered by Inspector of Police (PW.6). After being authorised by the Superintendent of Police PW.10 took up the investigation since, the offence under Section 3(1)(x) of SC/ST Act was made out in the complaint. Pending trial, the 2nd accused Sivaraman died. Hence, the sole accused Palanichamy was tried for offences under Sections 447, 506(ii) and under Section 3(1)(x) of SC/ST Act.

3. To prove the charges, the prosecution has examined 11 witnesses. Marked 13 Exhibits. In defence, the accused has examined Mr.Selvam, Advocate as DW.1 and the Advocate Commissioner report submitted by him in the civil suit initiated by the accused mother was marked as DW.1.

4. The learned counsel for the appellant would submit that there was a civil dispute between the defacto complainant and the appellant regarding usage of the Cart track. On the day of alleged incident, the Advocate Commissioner was supposed to visit the disputed land to note down the physical features. Summons was served to the PW.1 (Najan) by the Advocate Commissioner, which was refused by him. Infuriated by the Act of the appellant resorting to civil remedy, a false case has been lodged against the appellant alleging that the appellant and the deceased Sivaraman intimidated and insulted him using the communal name. Further, a false accusation has been made for criminal trespass.

5. The learned counsel would submit that the disputed area was not a private property of Najan (PW.1). It's a forest reversed area, where the cart track runs. Since, it was attempted to be restricted for access, the appellant mother had filed a suit for appropriate remedy. To withdraw the said suit, pressure was exerted on the accused person. Since, they did not yield for that, a complaint was given, as if on 19.11.2007, the alleged incident was occurred. The witnesses for the prosecution belongs to the same community and they are all

interested witnesses. The alleged incident of insulting PW.1 (Najan) and PW.2 (Velusamy) using their communal name was not within the public view, even according to the prosecution. The delay in lodging the F.I.R was not properly explained by the de facto complainant. The presence of PW.3 (Rangasamy) and PW.7 (Saraswathi), at the time of occurrence is highly improbable. The appellant had probalised the defence by examining DW.1 Mr.Selvam, the Advocate Commissioner who visited the disputed place on 19.11.2007 and the Advocate Commissioner's report (Ex.D.1) and rough sketch (Ex.P.9) would through light that there is a cart track in existence and there was no intention of criminal trespass or necessity to abuse the defacto complainant and PW.2 (Velusamy) using their community name.

6. Per contra, the learned Government Advocate would submit that the incident took place on 19.11.2007 at about 11.00 a.m. The tractor driven by Kumar (PW.4) engaged by the appellant and deceased Sivaraman was carrying load of plantain and as per the instruction of the appellant and the deceased Sivaraman, Kumar (PW.4) driven the tractor through the land of PW.1 (Najan) and PW.2 (Velusamy). Since, the rising crop of Ragi and Semolina got destroyed. PW.1 (Najan) and PW.2 (Velusamy) objected it. Hearing the commotion, PW.3 (Rangasamy) and PW.7 (Saraswathi) rushed to the spot. They both tried to pacify the PW.1 (Najan) and PW.2 (Velusamy). PW.7 Saraswathi is a ward Member of that locality. She had deposed that the villagers tried to compromise the issue but both the parties refused to settle the dispute amicably. This is the reason why there was delay of 10 days in lodging the complaint. Therefore, the Government Advocate would submit that no prejudice caused to the accused persons, in the delay of registering the F.I.R. After authorisation received from the Superintendent of Police, as per the rules framed under the SC/ST (POA) Act, the Deputy Superintendent of Police PW.10 has taken up the investigation though there is a delay in completing the investigation and filing the final report. The delay has not caused any prejudice to the accused persons and therefore, the judgment relied upon by the learned Counsel for the appellant in Manimeglai & others Vs. State represented by Inspector of Police, Adhiyamankottai reported in CDJ 2016 MHC 6051 has no application.

7. Heard the learned Counsel for the appellant and the learned Government Advocate appearing for the respondent/state.

8. The evidence before the Court indicates that there was dispute between the appellant and PW.1 (Najan) regarding usage of Cart Track passing through the settlement of Irular community. Pursuant to the civil suit filed before the District Munsif Court, Mettupalayam, in O.S.No.349 of 2007 by Nanjammal and others Vs. Najan and others. The Court appointed the Advocate Commissioner, visited the village on 19.11.2007. The

Nanjammal is mother of the appellant. The de facto complainant is one of the defendant in the said suit. The Advocate Commissioner who has visited the village has been examined as DW.1 who has deposed that he visited the village for inspection at about 1.00 p.m. Whereas, the complaint which is marked as Ex.P.1 indicates that the incident took place on 19.11.2007, at about 11.00 a.m. The observation mahazar prepared by the I.O is marked as Ex.P.2. The Adangal and Patta which stands in the name of PW.1 (Najan) and others who belong to Irular community. From the rough sketch (Ex.P.9), the Court could find that to have the access to the land of appellant, they have to pass through the land of PW.1 (Najan) and PW.2 (Velusamy). It is the case of the prosecution that on the date of occurrence (19.11.2007), the appellant along with deceased Sivaraman has directed Kumar (PW.4), the Tractor driver to pass through the cultivated area of PW.1 (Najan) and PW.2 (Velusamy). Though Kumar PW.4 was declared hostile by the prosecution, his statement in chief would show that the tractor carrying plantain load was asked to pass through the land of Rajan and Rangaraj, which was objected by them. Though PW.4 has not supported the case of the prosecution that when PW.1 and PW.2 objected the appellant, taking the Tractor through their land. The appellant and deceased Sivaraman abused them with insulting language causing annoyance to them. This fact is spoken by PW.7 (Sarawathi) and PW.3 (Rangasamy).

9. The learned counsel for the appellant would submit that the presence of PW.3 and PW.7, at that point of time is highly doubtful. On perusal of the depositions of PW.3 and PW.7, this Court finds their depositions are reliable and their presence are explained by both the witnesses is acceptable to the Court. PW.3 (Rangasamy) belongs to the same village and also incidentally belong to the accused community. He has land within 300 meters from the land of Velusamy (PW.2). He was present at the scene of occurrence since, he was there to engage labourers. PW.7 (Sarawathi) is a ward member of that village, though she belongs to the community of the complainant, her evidence is natural and does not carry any embellishment. Just because she belongs to the community of the complainant, her evidence cannot be disbelieved, when her evidence is unblemished. Kumar (PW.4) the Tractor driver though turned hostile also substantially corroborate the case of the prosecution, as far as the criminal trespass into the land of PW.1 and PW.2. It is emphasised by the learned counsel for the appellant that the insulting utterance was not in the public view and therefore, under Section 3(1)(x) of SC/ST Act, will not get attracted.

10. In support of his submission, he has also circulated the judgment of this Court, where the Court has held that if any insulting utterance is made, without public view

Section 3(1)(x) of SC/ST Act will not attract. In this case, the insulting utterance has been heard by PW.3 (Rangasamy) and PW.7 (Saraswathi). They have repeated the utterance verbatim in their deposition. So, the defence taken by the learned counsel and the judgment relied by him has no application.

11. Considering the evidence available, it is clear case that the appellant herein had intentionally insulted the de facto complainant and PW.2 (Velusamy), are liable to be punished for offence under Section 3(1)(x) of SC/ST (POA) Act.

12. Accordingly, the Criminal Appeal is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

bsm

To

1. The Special Judge/Principal District Sessions Judge, Coimbatore.

2. The Deputy Superintendent of Police, Perianayakanpalayam Sub Division, Coimbatore District.

3. The Public Prosecutor
High Court, Madras 104.

Criminal Appeal No.511 of 2011

SAI (CO)
SP(03/05/2019)

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