

Bail Slip

The Petitioners/Accused namely 1.Mukesh S/O Parasuraman 2.Sivaprakasam S/O Muthaian and 3.Parasuraman S/o Kaliyaperummal were directed to be released on bail vide order dated 30.8.11 made in CrI.M.P.No.1/11 in CrI.A 539/2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.539 of 2011

1. Mukesh,
S/o.Parasuraman,
S.Pudur, Sathankuppam (P.O),
Cuddalore Taluk & District.
2. Sivaprakasam,
S/o. Muthaian,
Mariamman Koil Street,
S.Pudur, Sathankuppam (P.O),
Cuddalore Taluk & District.
3. Parasuraman,
S/o.Kaliyaperumal,
S.Pudur, Sathankuppam (P.O),
Cuddalore Taluk & District. Appellants/Accused

/versus/

State by Deputy Superintendent of Police,
Cuddalore. Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, against the conviction and sentence passed against them in the judgment dated 03.08.2011 passed in S.C.No.352/2010 by the Learned Principal Sessions Judge, Cuddalore under Section 374(2) of Cr.P.C.

For Appellants : Mr.J.Rajmohan

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

J U D G M E N T

The Appeal preferred by the accused aggrieved by conviction and sentence imposed by the trial Court for offence under Section 3(1) (x) of S.C and S.T (Prevention of Atrocities) Act, 1989.

2. The Appellants herein are A1 to A3. Based on the complaint given by one Vinoth Kumar, the respondent police has registered a complaint for offences under Section 147, 294, 323 and 506 (ii) I.P.C read with 3(i)(x) S.C & S.T Act (Prevention of Atrocities) Act, 1989, on 11.08.2010. According to the first information report, when the complainant Vinoth Kumar along with his friends Anbarasan and Saravanan waiting at S.Pudur, M.G.R Statue-Bus stand, the accused Mugesh, Sivapagasam and 18 others came to them and picked quarrel regarding some inscription on the M.G.R Statue and they also insulted them by using the community name. They informed about this matter to their community people over phone and went to Cuddalore. At about 9.00 am when his community boys came to bus stop Mugesh, Sivapagasam and others again insulted them using community name and prevented them boarding the bus saying that students of lower caste should not come to the bus stop, to board the bus. They also started beating them indiscriminately. When Mayavathi mother of Vinoth Kumar came to their rescue, she was also abused by them. Hence, naming 17 persons with their father's name, complaint was given and First Information Report was also registered.

3. Magheswaran (PW.23), Deputy Superintendent of Police who was authorised to investigate the case by the Superintendent of Police has taken up the investigation. He filed final report before the Principal Sessions Court, Cuddalore.

4. Based on the records collected during the investigation, the trial Court has framed charges under Section 3(i)(x) of S.C and S.T Act (Prevention of Atrocities) Act, 1989 and for offence under Section 323 (18 counts), 323 r/w 34 (18 counts) for insulting 18 persons of Schedule Community by using their community name and for causing hurt with hands and legs.

5. Before the trial Court, the prosecution has examined 23 witnesses, 24 documents were marked as Ex.P.1 to Ex.P.24. The trial Court has held that accused are not guilty of offences under Section 323, 323 r/w 34 of I.P.C. Whereas, the prosecution has proved beyond the guilt and under Section 3(i)(x) of S.C and S.T (Prevention of Atrocities Act), 1989. They were convicted and sentenced to undergo two years R.I and a fine of Rs.1,000/- in default to undergo 6 months S.I.

6. Aggrieved by that, the present appeal is preferred on the grounds that the trial Court has failed to consider the delay in registering the First Information Report, the Investigating Officer conducted the investigation without proper authorisation as per Rule 7 and the trial Court not considering the age of the 1st Appellant/accused who was juvenile at the time of occurrence.

7. The Learned Counsel appearing for the appellant would also submit that there is no evidence in support of the prosecution to prove that the witnesses were insulted using their community name in the public view, which is the main ingredient to attract offence under Section 3(i)(x) of S.C and S.T Act, 1989.

8. The learned Additional Public Prosecutor would submit that the occurrence took place near bus stand which is a public place. The prosecution witnesses (PW.1 to PW.10) who were present at the time of occurrence have spoken about the abusive words used by the accused persons and they have being insulted due to the abusive word. As far as the authorisation to investigate, the learned Public Prosecutor would draw attention of this Court to Ex.P.22 Authorisation letter issued by the Superintendent of Police, Cuddalore naming Maheswaran (PW.23) to take up the investigation. As far as, the age of the 1st accused/appellant is concerned, the learned Public Prosecutor would submit that this plea is taken for the first time in the appeal. The appellant has not produced any document to show on the date of occurrence A1 (Mukesh) was a juvenile.

9. This Court, after giving anxious consideration to the submissions and the finding of the trial Court finds that the alleged incident has taken place on 11.08.2010 at about 8.45am near S.Pudur M.G.R Statue. The F.I.R has been registered based on the information given by Vinoth Kumar (PW.1) who was admitted in the hospital for body pain alleged to have sustained due to the attack. In the complaint, he has named 17 persons with their fathers name. It is also the case of the defacto complainant that they attacked 18 boys indiscriminately. The Accident Register relied by the prosecution are marked as Ex.P.2 to Ex.P.18 issued by Dr.Lavanya [PW.14] does not disclose any injury, except complaint of body pain. Therefore, the Doctor has opined that the injury as simple in nature. While the complaint has given a detailed account of the persons along with the father name, the investigation has disclosed that only three persons were involved in the incident. Thus, the embellishment in the incident has crept in even at the time of F.I.R given to the police. Probably that was due to the fact that after the alleged incident took place at 8.30 am people of the oppressed community has gathered near the M.G.R Statue and thereafter, some of the persons were taken to the hospital at around 11.45

am, from the hospital intimation was given to the police. Pursuant to the intimation, the police has gone to the hospital recorded the statement from Vinoth Kumar (PW.1). During this time external advise has lead to embellishment.

10. As pointed out by the learned Counsel for the appellant to attract offence under Section 3 (i)(x) of S.C and S.T Act, the main ingredient is insult in public view. PW.1 to PW.10 invariably, in their chief examination has deposed that the accused persons insulted them by calling their community name and it caused insult and shame to them. However in their respective previous statement, they have not said so to the Investigating Officer and that fact has been elucidated during the cross examination of PW.23 (Maheswaran) the investigation Officer.

11. First Information Report has registered based on the complaint given by Vinoth Kumar, from evidence it clearly indicates that it was prepared belatedly on external advice and it probably, not the 1st information received by police. While the occurrence took place at about 8.30am on 11.08.2010 and villagers were informed about it and the police have reached the scene of occurrence soon after that. The time taken for the police to register the complaint, may be late by only few hours, but by then the scope of embellishment and falsehood in the complaint has crept.

12. Furthermore, though through Ex.P.22, PW.23 was authorised to investigate the case under S.C and S.T Act which apparently satisfies the mandatory requirement of Rule 7 of the said Act, the said authorisation was not forwarded to the Magistrate immediately along with the F.I.R and other documents. It has been forwarded after two months. This also causes doubt about the genuineness of the prosecution case whether authorisation was issued before commencement of investigation or antedated to satisfy Rule 7.

13. As per the prosecution case, some inscriptions in M.G.R statue was the cause for dispute. Conspicuously, the I.O has not made any note about that in the observation mazahar or collected evidence to that effect during the course of investigation. In fact, in the cross examination, it has been elucidated that he did not see any inscription on the M.G.R Statue, written or erased. This also throw serious doubt about the entire prosecution case in the manner, in which it has been projected before the Court.

14. In the light of the above fact, the Appellants deserves benefit of doubt. The trial Court has failed to consider the weak evidence and lapse in compliance of mandatory provision before holding the accused guilty of charges. Hence, the Criminal Appeal is Allowed. Hence, the judgment of the trial Court is liable to be set aside. Fine amount paid, if any, shall be refunded.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Cuddalore.
2. The Judicial Magistrate No.3,
Cuddalore.
3. The Chief Judicial Magistrate,
Cuddalore.
4. The Deputy Superintendent of Police,
Cuddalore.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Rajmohan, Advocate Sr.12909

Criminal Appeal No.539 of 2011

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srg 14/03/2019

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