

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 28.01.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. APPEAL NO. 583 OF 2011

Nanjappan

.. Appellant/Accused-1

- Vs -

State by

Deputy Superintendent of Police

Pennagaram Sub Division

Dharmapuri District.

.. Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, against the sentence and order dated 26.8.11, passed by the Principal Sessions Judge/Special Judge under the SC/ST Act, Dharmapuri, made in S.C. No.71/2008.

For Appellant : Mr.V.Chinnasami

For Respondent : Mr. G.Ramar, GA (Crl. Side)

JUDGMENT

This appeal has been filed assailing the conviction and sentence dated 26.8.11, passed by the learned Principal Sessions Judge/Special Judge under the SC/ST Act, Dharmapuri, in S.C. No.71/08.

2. Heard Mr.V.Chinnasami, learned counsel for the appellant and Mr.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent and perused the materials available on record.

3. Today, Mr.A.Mani, Sub Inspector of Police, Hogenakkal Police Station is present in Court and he has produced Nanjappan (A-1) and Saravanan (A-2).

4. Commenting about the state of affairs of the administration of the criminal justice system, the eminent jurist Late N.A.Palkhivala lamented "Our legal system has made life too easy for the criminals and too difficult for law abiding citizens. A touch here and a push there and India may

become ungovernable in the present constitutional setup". The facts of this case validates this sagely prophecy of Late N.A.Palkhivala.

5. On 2.5.00, around 6.00 p.m., one Sivashankar, a dalit, was abused by reference to his caste name and physically attacked by Nanjappan (A-1) and Saravanan (A-2) pursuant to which on the complaint lodged by Sivashankar, Pennagaram Police registered a case in Crime No.476/00 on 2.5.00 for the offences u/s 323 and 506 (ii) IPC and Section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act (for short 'SC/ST Act'). However, for want of territorial jurisdiction, the case in Pennagaram Police Station Crime No.476/00 was transferred to Hogennakkal Police Station and was renumbered as Crime No.86/00 on the file of the Hogennakkal Police Station. Since the FIR was registered for the offence under the SC/ST Act, the Deputy Superintendent of Police, Pennagaram Sub-Division took up investigation of the case and filed a final report in P.R.C. No.24/00 before the Judicial Magistrate, Pennagaram against Nanjappan (A-1) and Saravanan (A-2). Since Saravanan (A-2) absconded, after two years, the case in P.R.C. No.24/00 was split up qua the absconding accused Saravanan (A-2) and was renumbered as P.R.C. No.37/02.

6. The case in P.R.C. No.24/00 qua Nanjappan (A-1) was committed to the Court of Session, Krishnagiri, and was taken on file as S.C. No.312/02. Nanjappan (A-1) filed Crl. M.P. No.1225/04 in S.C. No.312/02 for discharge u/s 227 of Cr.P.C. and by order dated 24.6.04, Nanjappan (A-1) was discharged from the prosecution. Neither the State nor the defacto complainant challenged the order of discharge. May be, the defacto complainant was not even aware of the discharge of Nanjappan (A-1).

7. In the meantime, non-Bailable warrant was issued by the Judicial Magistrate, Pennagaram, to secure Saravanan (A-2). Whiles, Krishnagiri District was bifurcated and a new District, viz., Dharmapuri District, was carved out. Saravanan (A-2) was eventually arrested by the police and was produced before the Judicial Magistrate, Pennagaram, on 19.8.08 in P.R.C. No.37/02 and his case was also committed to the Court of Session, Dharmapuri, for trial.

8. Before the Court of Session, Dharmapuri, charges were framed against Saravanan (A-2) for the offence u/s 323, 506 (ii) IPC and Section 3 (1) (x) of the SC/ST Act. When questioned, Saravanan (A-2) pleaded not guilty. To prove the case, the prosecution examined 10 witnesses (P.W.s 1 to 10) and marked 10 exhibits (Exs.P-1 to P-10).

9. Sivashankar, the defacto complainant, was examined as P.W.1 and in his evidence, he has clearly implicated and has spoken about the overt acts of Nanjappan (A-1) and Saravanan (A-2). On a reading of his deposition, he has clearly stated as follows :-

“அப்போது ஆஜர் எதிரியும் சின்ன திக்கலன் மகன் நஞ்சப்பன் இந்த வழக்கிலிருந்து விடுவிக்கப்பட்ட நஞ்சப்பன் என்பவரும் என்னை சூழ்ந்துகொண்டு நஞ்சப்பன் பக்கம் இருக்க ஆஜர் எதிரி தடியாலும், தலை, வாய், காது ஆகிய இடங்களில் தாக்கினார்கள். அதனால் எனக்கு காதிலிருந்து ரத்தம் வந்தது.”

(Free English Translation - At that time, Nanjappan, the son of Thikkalan, who has been discharged from this case surrounded me and with Nanjappan beside me, the accused herein beat me with stick on my head, mouth, ear due to which blood oozed out from my ear.)

10. The trial court questioned Saravanan (A-2) u/s 313 Cr.P.C. on the incriminating circumstances appearing against him in the evidence of the prosecution witnesses and he denied the same. No witness was examined nor any document was marked on behalf of Saravanan (A-2). The trial court, by judgment dated 26.8.11, in S.C. No.71/08, has convicted and sentenced Nanjappan (A-1), the discharged accused, instead of convicting Saravanan (A-2), who was physically present in flesh and blood before the trial court. The irony is that the question relating to quantum of sentence u/s 235 (2) Cr.P.C. was also posed to Saravanan (A-2). The trial court, by judgment dated 26.8.11 in S.C. No.71/08, passed the following sentence against Nanjappan (A-1):-

S. No.	Section	Sentence
1	U/s 323 IPC	Convicted and sentenced to rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.
2	U/s 3 (1) (x) of SC/ST Act	Acquitted

Saravanan (A-2) paid the fine of Rs.1,000/- on 26.8.11 vide receipt No.358483 in the trial court.

11. However, the present appeal in C.A. No.583/2011 has been filed in the name of Nanjappan (A-1) and this Court, in M.P. No.1 of 2011 has even suspended the sentence of imprisonment u/s 389 IPC with a direction to execute a bond before the trial court.

12. When the final disposal in C.A. No.583/2011 was taken up for hearing by this Court on 8.1.19, learned counsel appearing for the appellant placed all the aforesaid facts before this Court. This Court, by order dated 18.1.19, directed the District Judge, Dharmapuri, to send the photocopies of the available records to this Court. This Court had also directed the police to produce both Nanjappan (A-1) and Saravanan (A-2) before this Court. On 21.1.19, the police produced both Nanjappan(A-1) and Saravanan (A-2) before this Court. When enquired, Nanjappan (A-1) submitted that since Saravanan (A-2) was in abscondance, the case against him was split up and his (Nanjappan's) case was sent to the Court of Session, Krishnagiri, where he was discharged from the prosecution as early as on 24.6.04. He (Nanjappan) further submitted that he did not know what happened to the case thereafter and only on information from the police, he has appeared today. He (Nanjappan) further submitted that he did not file the present appeal, C.A. No.583/2011 because he was already discharged from the prosecution.

13. Saravanan (A-2) stated that he was appearing before the Court of Session, Dharmapuri, and participated in the trial in S.C. No.71/08 and even remitted the fine of Rs.1,000/- in the trial court.

14. Mr.Chinnasami, learned counsel on record in C.A. No.583/11 submitted that the counsel, who had appeared before the trial court had sent the brief to him in the year 2011 requesting him to file the present appeal based on which he filed this appeal. On perusal of the original records, only a memo of appearance has been filed in the name of Nanjappan (A-1) and the signature of the party is not there. Learned counsel further submitted that he himself realised this anomaly only when he started preparing for arguing the present appeal and not earlier.

15. This Court called for report from the Trial Judge, who had passed the judgment in S.C. No.71/08 on 28.8.2011. The Trial Judge, who is now serving in another District, has sent a report dated 25.1.19 stating that it was Saravanan (A-2), who was appearing before him, but inadvertently he has referred to his name as Nanjappan and, therefore, prayed for mercy. In the last part of the communication dated 25.1.19, he has stated as under :-

"I feel extremely sorry and deeply regretted for the discrepancy crept in the judgment and I beg to submit to request the pardon of the Hon'ble High Court, Madras, for the discrepancy crept in the judgment, and I also beg to request to pardon me for the inconvenience caused to the Hon'ble High Court, Madras in this regard."

16. This Court is not able to fathom as to how the Trial Judge could say that he had done this inadvertently because even in the evidence of P.W.1, Nanjappan has been referred to as the 'discharged accused'. Even if this Court were to give the benefit of doubt to the Trial Judge, what bothers this Court is that, neither Mr.Vimalan, the Special Public Prosecutor for the State, nor Mr.K.Ranganathan, the advocate for Saravanan, made any attempt to set right this anomaly and still we refer to them as 'officers of the court'. The police also did not take any steps, atleast through the State Public Prosecutor to bring to the attention of this Court this grave anomaly since 2011. The tragedy is that, for the occurrence that took place in the year 2000, the system has not been able to properly acquit or punish the offender till 2019 for which all the stakeholders should hang their head in shame instead of passing the buck and washing off the responsibility that we owe to the citizens of this country. Had the parties involved in this case been affluent and capable of engaging high profile lawyers, would this state of affairs have occurred is a million dollar question.

17. Counsel at the Bar brought to the notice of this Court that this is not something new that has happened here and that a more graver incident had taken place in the Supreme Court, wherein four accused, who were acquitted by the High Court, against which the State did not file any appeal, were convicted and lodged in prison, while dealing with the appeal against acquittal filed by the State against four other accused in the same case (See : State of M.P. - Vs - Sughar Singh & Ors. (2008 (15) SCC 442)). In that case, eight accused were acquitted by the High Court of all the charges, challenging which, the State filed an appeal against acquittal as against only four persons. After hearing the appeal, the Supreme Court convicted and sentenced all the eight accused, pursuant to which three accused, against whom no appeal was filed, were arrested and lodged in prison for undergoing the sentence. After two years, they filed a petition to recall the order in which the Supreme Court, by order dated 21.4.2010, recalled the entire order dated 7.11.08, and posted the appeals afresh for hearing to decide the culpability only of the accused against whom the State had filed the appeals (See : State of M.P. - Vs - Sughar Singh & Ors (2010 (15) SCC 96)). The other four accused, who were wrongly convicted and sentenced by the order dated 7.11.08 earned their

reprieve. Therefore, in this case also, it is imperative for this Court to set aside the entire judgment of the trial court and remand the case to the trial court for hearing afresh.

18. On an overall consideration of the issue, the only way out is to set aside the judgment under appeal and remand the matter to the trial court for passing a judgment afresh.

19. In the result, the judgment in S.C. No.71/08 dated 26.08.2011 is set aside. The matter is remitted to the Principal Sessions Judge/Special Judge for SC/ST Act cases, Dharmapuri, for passing of a judgment alone on the evidence available on record after giving an opportunity to the Special Public Prosecutor and the learned counsel for Saravanan (A-2) to make their submissions. Saravanan (A-2), who is present before this Court is bound over to appear before the Principal Sessions Judge/Special Judge for SC/ST Act cases at 10.30 a.m. on 4.3.19. On the appearance of Saravanan (A-2) on 4.3.19, the trial court shall pass orders in the said case within a period of one month from 4.3.2019. A copy of the entire typed set of papers in this appeal (C.A. No.583/11), which contains the copies of the deposition of the witnesses and the exhibits have been furnished to Saravanan (A-2) in open court so that he does not suffer any handicap while presenting his case before the trial court.

20. The Deputy Registrar (Crl. Side) is directed to send the original records in S.C. No.71/08 through a Special Messenger immediately to the trial court along with a copy of this order.

21. The explanation submitted by the Trial Judge, is accepted. Similarly, the explanation submitted by the staff of the Registry, pursuant to an enquiry conducted by the Deputy Registrar (Crl. Side) is also accepted. However, the concerned staff members are directed to be more careful in future so that such mistakes do not recur.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

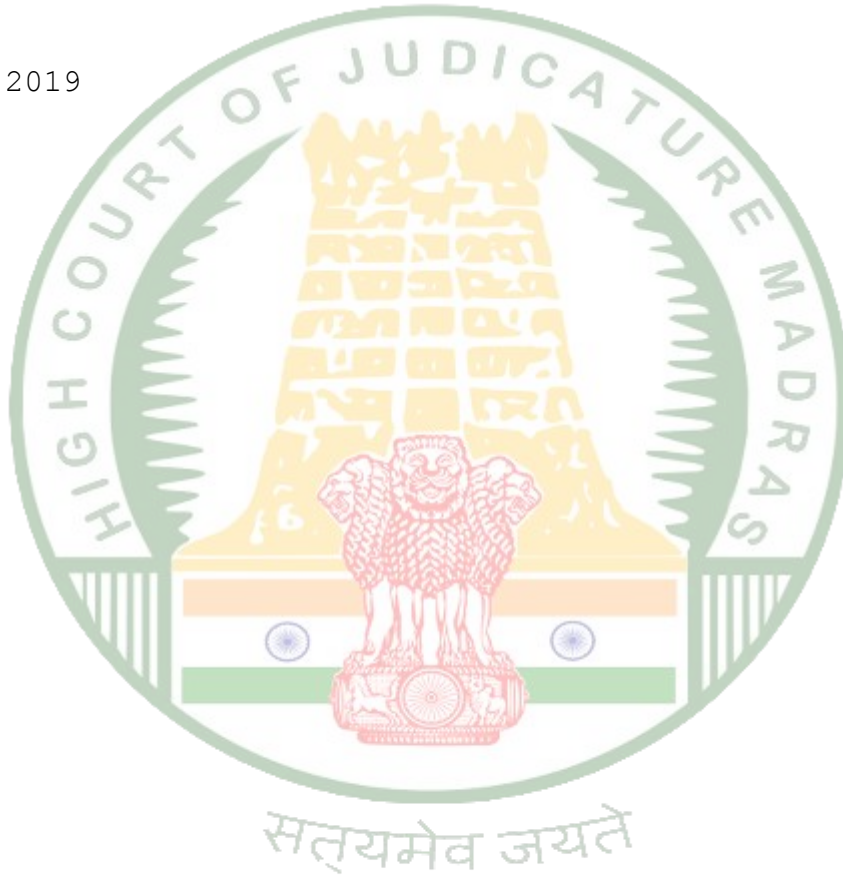
To

1. The Principal District & Sessions Judge for SC/ST Cases, Dharmapuri.

2. The Deputy Superintendent of Police,
Pennagaram Sub Division, Dharmapuri District.
3. The Public Prosecutor
High Court, Madras.
4. The Deputy Registrar,
Criminal Section, High Court, Madras.

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