

BAIL SLIP

The Appellants, Viz., Balu @ Balasubramaniam, S/o.Velusamy Gounder, aged about 29 years, Durai @ Duraisamy S/o.Rama Boyam, aged about 45 years, Prabhu @ Prabukumar aged about 26 years, S/o.Gopalan, were directed to be released on bail vide MP.No.1 of 2011 in CrI.A.No.596 of 2011 dated 28.09.2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.03.2019

PRONOUNCED ON : 02.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.596 of 2011

1.Balu @ Balasubramaniam
2.Durai @ Duraisamy
3.Prabhu @ Prabukumar

Appellants

Vs

State rep. By the
The Deputy Superintendent of Police,
Perur Division,
Chettipalayam Police Station,
Coimbatore
(Crime No.5 of 2010)

Respondent

Prayer:- This Criminal Appeal is filed under Section 378 Cr.P.C., against the judgment passed in Spl.S.C.No.27 of 2010 on the file of the learned Principal District Sessions Judge cum Special Judge, Coimbatore dated 14.09.2011.

For Appellants : Mr.V.Gopinath, Senior Counsel
for Mr.S.N.Arunkumar

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

JUDGMENT

The appellants herein are the accused before the trial court in Special S.C. 27/2010 on the file of the Principal Sessions Court cum Special Court, Coimbatore.

2.The first appellant was tried for offences under sections 3 (1)(x) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "SC & ST" Act) and sections 294 (b) and 324 of IPC. The other two appellants were tried for offence under section 342 IPC. The trial Court convicted and sentenced the accused as below:-

(i)A-1 (Balu @ balasubramaniyan):

For offence under section 3 (1)(X) of SC and ST (POA) Act sentenced to undergo 6 months rigorous imprisonment with fine of Rs 1000/- in default 1 month Simple imprisonment; for offence under section 294(b) of IPC sentenced to undergo 3 months rigorous imprisonment with fine of Rs.1000/- in default 3 weeks Simple imprisonment and for offence under section 324 IPC sentenced to undergo 1 year rigorous imprisonment with fine of Rs.1,000/- in default 3 months Simple imprisonment.

(ii) A-2 (Durai @ Duraisami) and A-3 (Prabu @ Prabukumar)

Convicted for offence under section 342 IPC. Sentenced both the accused to undergo 1 year rigorous imprisonment with fine of Rs 1000/- in default 3 months Simple imprisonment.

3.The case of the prosecution, is as follows:-

PW-1 belongs to Scheduled Caste community. He was working as site Engineer in Vijayaraj and Company. On 02.01.2010 at about 3.00 pm, when he was taking his food near a stream back of Malumichampatti North Garden, the appellants came there and enquired him. Knowing that he belongs to Scheduled Community, they insulted him calling his community name. A-1 attacked him with cycle tyre on his left shoulder, back and thigh. At that time, A-2 and A-3 caught both the hands of PW-1. The case was registered about this incident, based on the intimation received from the hospital. The complaint given by PW-1 to the respondent police on 03/01/2010 at 15.00 hrs. Thiru.Janaki, Sub-Inspector of Police registered the complaint. The Superintendent of Police, Coimbatore District on considering the fact that the alleged offence attracts the provisions of SC and ST Act, nominated Mr.Muthurasu, the Deputy Superintendent of Police to investigate.

4.To prove the charges, the prosecution examined 13 witnesses (P.Ws.1 to 13). 20 exhibits (Exs.P.1 to P.20) were marked and a cycle tyre piece of 60 cm length was marked as M.O.1.

5.The trial Court accepted the version of the prosecution as spoken by PW-1, the defacto complainant and PW-8 - Senthil, the witness to the occurrence. Relying upon the evidence of the Doctors PW-2 and PW-3, the injuries noted in the accident register were held to be proved as the injuries sustained by PW-1 as deposed by him.

6.The learned Senior Counsel appearing for the appellants submitted that, admittedly, the accused and the defacto complainant are strangers to each other. While so, the allegation that the accused knew the community of the defacto complainant (P.W.1) and abused him by filthy language calling his community name is highly unbelievable. The trial court has failed to consider that PW-1 is a wholly unreliable witness and PW-8 presence at the place of alleged occurrence is doubtful.

7.The Doctor - PW-2 who admitted PW-1 on 2/01/2010 at about 7.40 pm has deposed that at the time of admission, PW-1 said he was assaulted by four unknown persons. Whereas, in the complaint given by PW-1 to the Sub-Inspector of police on the next day at about 10.00 hrs, he has stated the name of the first accused and 3 unknown persons.

8.On completion of investigation, the Investigating Officer has laid final report only against three persons. In the cross examination PW-1 admits that only 3 persons assaulted him. The embellishment in the complaint of PW-1, delay in lodging the FIR and lack of corroboration were not at all considered by the court below.

9.The alleged recovery of M.O.1 a piece of cycle tyre not been proved by the prosecution in the manner known. The witnesses to the recovery mahazar PW-10 and PW-11 were declared hostile by the prosecution. Further, according to the prosecution, the cycle tyre was recovered under mahazar Ex P-20 on 01/03/2010 at about 18.15 hrs. Whereas, PW-1 in his cross examination, admits that the Police showed him the cycle tyre in the police station. PW-1 showed his identity card. The person who enquired him, torn the identity card.

10.Further, the learned Senior Counsel would submit that, even according to the defacto complainant, at the time of the alleged occurrence, except the three accused, nobody was present. If so, in the absence of public view, Section 3(1)(x) of SC and ST Act, will not attract. Relying upon the judgment of

this court in K.Jayaramanuju -vs- Janakaraj & others reported in 1996 (1) CTC 470, the learned Senior Counsel would content that, to convict a person under section 294(b) IPC, mere utterance of obscene words not sufficient. The utterance of obscene words must cause annoyance to others. In this case, the prosecution has failed to prove that utterance of the word by the first appellant caused annoyance to P.W.1. Therefore, the learned Senior Counsel submitted that, the trial court judgment has to be set aside and the appellants are entitled for acquittal.

11.Per contra, the learned Government Advocate (Criminal Side) contented that, the trial court has considered the evidence on holistic view. The exchange of words between the accused and the defacto complainant led to know the community of the defacto complainant (P.W.1). On knowing the community name of P.W.1, the accused persons got more furious and assaulted the defacto complainant (P.W.1) indiscriminately. For the criminal confinement and use of insulting words against PW-1 is proved through the reliable witnesses. In the case of this nature, it is difficult to secure independent witnesses. The circumstances as spoken by the prosecution witnesses proves the guilt of the accused and therefore, the judgment of the trial court has to be confirmed.

12.The analysis of the evidence placed, this court finds the trial court has erred in not considering the glaring material contradictions which does not indicate the prosecution version is believable. The case of PW-1 is that, he went to Malumichanpatti during the working hours at about 3.00 pm. His explanation for the presence at the alleged scene of occurrence itself not corroborated by the witnesses who are supposed to be his employer and co-employers. Further, he is not sure how many persons attacked him. In the accident register and FIR, it is four persons. While cross examination, he says it was only 3 persons. The investigation officer also in his final report has mentioned only 3 persons attacked PW-1.

13.PW-1 says, on 02/01/2010 during lunch time he went to the railway station to book ticket. At the end of the tar road, he enquired a girl the way to railway station. She directed him towards the bye-pass road. Then, he sat under a tree and started taking his food. At that time, a person (A-1) came and asked him who he is ? In turn, PW-1 asked that person who is he to ask about him. A-1 slapped him. Then, PW-1 showed his identity card. A-1 took it and torn the identity card. When he said he belongs to a particular political party, PW-1 abused him

calling his community and started beating him with a cycle tyre. It is the specific case of the defacto complainant that in the course of exchange of words, the accused disclosed his community. After knowing his community, the appellant abused him with obscene language and used insulting words. He got admitted in the hospital for treatment on that day evening and the next day police enquired him about the incident.

14. First of all, the testimony of PW-1 is contradictory to his previous statement and documents. New facts in the deposition and omissions are patently seen. Further, there is no corroboration to his testimony for the material facts. PW-8 is the witness who has deposed about the incident. He has spoken only about A-1 beating PW-1 with a tyre piece. He has not whispered anything about the presence of other accused (A-2 and A-3) or about any utterance of insulting word causing annoyance. PW-8 say that he questioned A-1 and rescued PW-1 from A-1. After giving water to PW-1, advised him to go to police and complaint. He also deposed that he gave his visiting card to PW-1. Whereas PW-1 has not whispered anything about this in his testimony. The best person who can vouchsafe the presence of PW-8 at the scene of occurrence is PW-1, but PW-1 does not corroborates anything about what PW-8 has deposed. Therefore, the alleged occurrence in the manner PW-1 had deposed and the presence of PW-8 on the date of occurrence at the scene of occurrence is clouded with doubt.

15. The incident has occurred on 02/01/2010 at about 3.00 pm. PW-1 has gone to the Government Hospital at Coimbatore on the same day at about 7.40 pm along with one Rajendiran. He was admitted as inpatient. The Accident Register - Ex.P-2 indicates that PW-1 has sustained 4 traced lacerated wounds on his thigh, on his back and left side shoulder. The complaint was given on the next day at about 8.00 am. He has left the hospital without intimation. Again he has got admitted on 06/01/2010 at about 1.10 pm. The conduct of PW-1 only show that complaint given by him is not the true reflection of the facts. For the sake of record he has been admitted in the hospital by one Rajendiran (not examined). The necessity of PW-1 to be at the spot of alleged crime, the reason for disclosing his communal identity to the appellants who are strangers to him and the delay of nearly 21 hours to give the complaint shows that the alleged incident has not happened in the manner and time as contented by the defacto complainant.

16. The disproportionate embellishment, contradictions and falsehood in the case of PW-1 disables this court to remove the grains from the chaff. Hence the appellants are entitled for the benefit of doubt.

17.In the result, the Criminal Appeal is allowed and the judgment of the trial court passed in Spl.C.C.No.27/2010 dated 14/09/2011 on the file of Principal District and Sessions Court cum Special Court, Coimbatore is set aside.. Both the appellants are acquitted from all the charges. Bail bond, shall stand cancelled. Fine amount paid, if any, shall be refunded to the respective appellants.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Principal District Sessions Judge cum Special Judge, Coimbatore.
- 2.The Judicial Magistrate No.VII, Coimbatore.
- 3.- do - through The Chief Judicial Magistrate, Coimbatore (for information)
- 4.The Public Prosecutor, High Court, Chennai.
- 5.The Deputy Superintendent of Police, Perur Division, Chettipalayam Police Station, Coimbatore.

copy to:

The Criminal Section,
High Court, Madras.

+1cc to Mr.S.N.Arunkumar, Advocate, S.R.No.31721

+1cc to Mr.S.Gunalan, Advocate, S.R.No.24479

CrI.A.No.596 of 2011

PPA(CO)
SSM(08/05/2019)

.04.2019



WEB COPY