

Bail Slip

The Appellant/Accused namely Elumalai S/o.Karivaradhan was directed to be released on bail as per the order of this court dated 30/09/2011 in Crl.M.P.No.1/2011 in Crl.A.NO.601/2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 10.01.2019

PRONOUNCED ON: 25.01.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.A. No.601 of 2011

Elumalai

Appellant

vs.

State by  
the Deputy Superintendent of Police  
Roshanai Police Station  
Tindivanam  
(Cr. No.144 of 2008)

Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. seeking to set aside the judgment dated 20.12.2010 passed by the Special Court for SC/ST Act Cases (Principal Sessions Judge) at Villupuram in S.C. No.6 of 2009.

For appellant Mr. M. Jaikumar for M/s.K.M.Elango

For respondent Mr. G. Ramar  
Govt. Advocate (Crl. Side)

JUDGMENT

This criminal appeal is focussed against the judgment dated 20.12.2010 passed by the Special Court for SC/ST Act Cases (Principal Sessions Judge) at Villupuram in S.C. No.6 of 2009.

2 Minus the minute details, the germane facts leading to the institution of this criminal appeal are as under:

2.1 It is the case of the prosecution that Neelavathy (P.W.1) belongs to Hindu Irular community, which falls within the purview of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (for short "the SC/ST Act"); on 05.04.2008, she went to the shop of one Subramani and asked his daughter Sumithra, who was in the shop, to give sugar and coffee powder for Rs.3/- on credit, which, Sumithra refused to give; so, when Neelavathy (P.W.1) was coming out of the shop, the appellant, who was watching this scene, picked up a quarrel with Neelavathy (P.W.1) and berated her by referring to her caste name and assaulted her.

2.2 On the complaint dated 06.04.2008 (Ex.P.1) lodged by Neelavathi (P.W.1), a case in Cr.No.144 of 2008 was registered under Section 294(b) and 323 IPC read with Section 3(1)(x) of the SC/ST Act and investigation of the case was taken over by Kumar (P.W.6), Deputy Superintendent of Police.

2.3 The Investigating Officer obtained the community certificate of the appellant and the victim, viz., Neelavathi (P.W.1), from Manjula (P.W.5), Revenue Divisional Officer and filed final report in P.R.C. No.17 of 2008 before the Judicial Magistrate No.I, Tindivanam, against the appellant for the said offences.

2.4 On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Special Court for SC/ST Act Cases (Principal Sessions Court), Villupuram in S.C.No.6 of 2009.

2.5 The Trial Court framed charges against the appellant under Section 323 IPC and Section 3(1)(x) of the SC/ST Act and when questioned, the appellant pleaded 'not guilty'.

2.6 To prove their case, the prosecution examined six witnesses and marked eight exhibits. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor was any document marked.

2.7 The Trial Court, after considering the evidence on record and hearing either side, by judgment dated 20.12.2010, convicted and sentenced the appellant as under:

| Provision of law under which convicted | Sentence                                                                                                      |
|----------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Section 323 IPC                        | Fine of Rs.500/-, in default to undergo 3 months simple imprisonment                                          |
| Section 3(1)(x) of the SC/ST Act       | 2 years rigorous imprisonment and fine of Rs.10,000/-, in default to undergo six months rigorous imprisonment |

2.8 Challenging the aforesaid conviction and sentence, the accused is before this Court.

3 Heard Mr. M. Jaikumar, learned counsel for the appellant and Mrs. G. Ramar, Govt. Advocate (Crl. Side) appearing for the respondent State.

4 The learned counsel for the appellant principally made the following three submissions:

(a) Neelavathy (P.W.1), in her evidence, has not stated that the appellant berated her by referring to her caste name;

(b) the investigation has been conducted by the Deputy Superintendent of Police without the authorisation required under Rule 7 of the SC/ST Rules; and

(c) the FIR in this case has been registered only after 5 days from the date of the incident, i.e., only on 10.04.2008 and that too, on account of agitation by some organisations and only to satisfy their demands.

5 In support of his submission (b) supra, the learned counsel for the appellant placed reliance upon the Division Bench judgment of this Court in Singh @ Bhagavathsingh vs. the Deputy Superintendent of Police, Paramakudi Sub Division, Paramakudi<sup>1</sup>.

6 Per contra, the learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the appellant.

7 This Court gave its anxious thought to the rival submissions.

8 It has been proved beyond cavil via the evidence of Manjula (P.W.5), Ex.P.4 (community certificate of Neelavathy (P.W.1) and Ex.P.8 (community certificate of the appellant) that Neelavathy (P.W.1) belongs to Hindu Irular community falling within the ambit of the SC/ST Act and the appellant belongs to Hindu Vanniar community, which does not fall within the purview of the said Act.

9 Neelavathy (P.W.1), in her evidence, has stated that she belongs to Hindu Irular community; on 03.04.2008, around 4 p.m., she went to the fish market to purchase fish and tendered Rs.50/- to the fishmonger, who stated that he does not have change; so, she approached Subramani, who runs a grocery shop

nearby, seeking change for Rs.50/-; since Subramani also did not have change, she gave Rs.50/- to him and took Rs.10/- from him, saying that she will buy provisions later for Rs.40/- and adjust the amount; on 05.04.2008, she came to Subramani's shop, where, his daughter Sumithra was there; she asked Sumithra to give sugar and coffee powder for Rs.3/-; when Sumithra refused, she told her that she had already given Rs.40/- to her father; since Sumithra did not relent, no purchase was made; when she came out of the shop, Kuppu, the appellant's mother, casually asked her as to why she did not make any purchase, for which, she (Neelavathy-P.W.1) replied that Sumithra is not believing that she had already given Rs.40/- to her father and is not giving sugar and coffee powder even on credit; so, when Kuppu interceded and asked Sumithra to give the items, the appellant, who was nearby, asked her (his mother) as to why she is interceding on behalf of a வில்லி தேவடியா as she (Neelavathy-P.W.1) strongly objected to this, a quarrel ensued, in which, the appellant gave a punch on her face, hit her on her chest and kicked her berating her as வில்லி தேவடியா she fell to the ground and at that time, her son Sakthivel (P.W.2) came there and took her to the Government Hospital, Tindivanam, for treatment and later, on her instructions, he wrote the complaint (Ex.P.1) and gave it to the police.

10 In the cross-examination, she has admitted that in the year 2002, she had given a similar complaint against the villagers in a dispute relating to drawal of water. She has also stated that she did not go to the police first and she got herself admitted in the hospital and only thereafter, the complaint was lodged.

11 Sakthivel (P.W.2), in his evidence, has stated that on 05.04.2008, after his return from the college, around 4.30 p.m., he learnt about the incident and took his mother (P.W.1) to the hospital for treatment and thereafter, on 06.04.2008, he wrote the complaint on the information provided by his mother (P.W.1) and gave it to the police.

12 Dr. Ravichandran (P.W.4), in his evidence, has stated that on 05.04.2008, around 6.45 p.m., he examined Neelavathy (P.W.1) and noted the following four injuries:

- i abrasion measuring 2 cm. x 6 cm. in left leg knee;
- ii abrasion measuring 1 cm. x ½ cm. in the second finger of right toe;
- iii abrasion measuring 2 cm. x 2 cm. below the mouth; and
- iv complaint of pain in the left hip and chest.

Dr. Ravichandran (P.W.4) has further stated that he admitted Neelavathy (P.W.1) as inpatient and issued copy of the accident register (Ex.P.3) and opined that the injuries suffered by her were simple in nature.

13 Thus, from the evidence of Neelavathy (P.W.1) and Dr.Ravichandran (P.W.4), it is limpid that a quarrel had ensued, in which, Neelavathy (P.W.1) sustained injuries in the assault by the appellant.

14 In the evidence of Manjula (P.W.5) and in the community certificate of Neelavathi (P.W.1), the community of Neelavathi (P.W.1) has been mentioned as Hindu Irular, whereas, in the evidence of Neelavathi (P.W.1), there is no reference to Hindu Irular at all and instead, she has alleged that the appellant called her வில்லி தேவடியா. Of course, it is not necessary that while berating a person by referring to his caste name, the abuser should have referred to the technical name of the community as referred to in the community certificate of the person so berated. It would suffice if the epithet employed by the abuser would imply the community to which the victim belongs. The argument of the appellant that there is no evidence to show that the expression வில்லி தேவடியா would refer to a person of the Irular community, was rejected by the Trial Court by holding that the said expression is a colloquial reference to the members of the Irular community in that area. This Court is in agreement with the said finding of the Trial Court as it is fortified by the following reference in the locus classicus "Castes and Tribes of Southern India", Volume - VII (T-Z) by Edgar Thirston, C.I.E., MJP Publishers:

"Villi: Villi (bow or Villiyan (bowmen) has been recorded as a synonym of the Irulas of Chingleput. Villi also occurs as a sub-division of Vettuvan, a hunting caste of the Tamil country."

15 As regards the contention of the learned counsel for the appellant that there was no authorisation under Rule 7 of the SC & ST Rules, it is seen that the SC/ST Act contemplates investigation by an officer not less than the rank of Deputy Superintendent of Police. Of course, Rule 7 does contemplate special authorisation for investigation and this has been reiterated in Singh (supra) relied on by the learned counsel for the appellant. However, in this case, the investigation was conducted by Kumar (P.W.6), D.S.P., who, in his evidence, has clearly stated that he received the case papers for investigation on 10.04.2008 and obtained the authorisation from the District Superintendent of Police and proceeded with the investigation. This has not been challenged in the cross-examination by the defence.

16 In H.N. Rishbud and Inder Singh vs. State of Delhi<sup>2</sup>, the Supreme Court was dealing with a case arising under the Prevention of Corruption Act, 1947, wherein, Section 5(4) contemplated investigation by an officer not below the rank of Deputy Superintendent of Police. However, the investigation was conducted by an officer below the rank of Deputy Superintendent of Police. In that context, the Supreme Court held as follows:

"19 . . . . . If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. . . . ."

17 Further, at this juncture, it is worth quoting Section 156(2) Cr.P.C. and the same reads as under:

"No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate."

18 As regards belated registration of the FIR, it is seen that the victim, viz., Neelavathy (P.W.1) suffered injuries and was admitted to the hospital for treatment. While she was under treatment, she lodged a complaint to the police through her son Sakthivel (P.W.2). Be it noted that delay in registration of FIR is not fatal in every case as held by the Supreme Court in Ravinder Kumar and another vs. State of Punjab<sup>3</sup> in the following words:

"14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of

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2 AIR 1955 SC 196

3 (2001) 7 SCC 690

furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. (Vide *Zahoor v. State of U.P.* [1991 Supp (1) SCC 372 : 1991 SCC (Cri) 678] , *Tara Singh v. State of Punjab* [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] and *Jamna v. State of U.P.* [1994 Supp (1) SCC 185 : 1994 SCC (Cri) 348] ) In *Tara Singh* [1991 Supp (1) SCC 536 : 1991 SCC (Cri) 710] the Court made the following observations: (SCC p. 541, para 4)

"4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report."

16. In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her, after identifying the dead body, that the same was that of her husband. The initial tension and suspense undergone by her would have billowed up into a massive wave of grief. It is only understandable how much time a woman,

placed in such a situation, would take to reach some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. We therefore find no merit in the contention based on the delay in lodging the FIR”

19 In view of the foregoing discussion, this Court does not find any infirmity in the findings of the Trial Court in convicting the appellant for the charged offences. However, this Court is of the view that it will be in the interests of justice, if the sentence of two years rigorous imprisonment slapped on the appellant is reduced to one year rigorous imprisonment.

20 Accordingly, the conviction made by the Trial Court in S.C. No.6 of 2009 vide judgment dated 20.12.2010 stands confirmed. However, the sentence of two years rigorous imprisonment for the offence under Section 3(1)(x) of the SC/ST Act is reduced to one year rigorous imprisonment. The sentence of fine and default sentence shall remain the same. The Trial Court is directed to secure the presence of the appellant and commit him to prison for undergoing the remaining period of sentence.

In the upshot, this criminal appeal is allowed in part.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

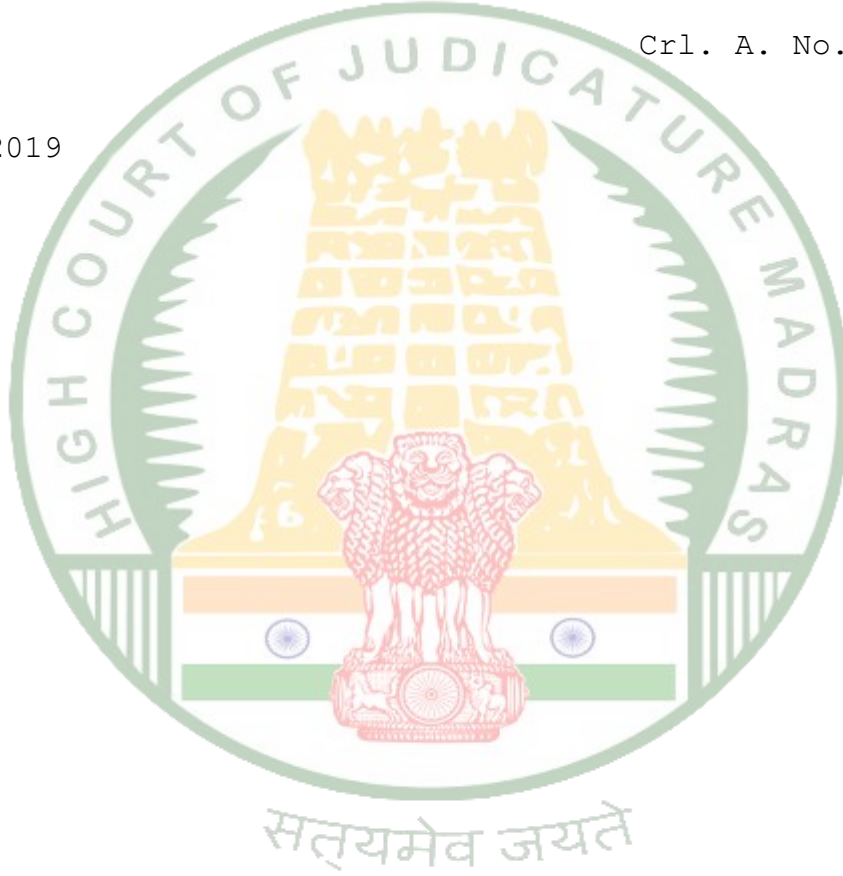
- 1 The Deputy Superintendent of Police  
Roshanai Police Station  
Tindivanam
- 2 The Principal Sessions Judge,  
Special Court for SC/ST Act Cases  
Villupuram
- 3 The Public Prosecutor  
Madras High Court  
Chennai 600 104

4. The District Collector/District Magistrate,  
Villupuram.
5. The Director General of Police,  
Mylapore, Chennai-4.
6. The Section Officer,  
Criminal Section Records,  
High Court, Madras (2 copies)

+1cc to Mr.M.Jaikumar, Advocate sr.no.7006

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