

Bail Slip

The Appellants herein/Accused 1 7 2 namely 1. T. Baskar S/o.Thirugnanam aged about 25 years and 2. A. Baskaran,S/o.Arumugam aged about 29 years were released on bail as per order of this Court dated 24th day of February Two thousand twelve made in CrI.MP.No.1 of 2012 in CrI.A.No.124/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.02.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.124 of 2012

1.T. Baskar

2. A. Baskaran

.. Appellants/Accused 1 & 2

Vs

The State

Rep by its

Deputy Superintendent of Police

Vridhachalam Circle

Cuddalore District

(Karuveppilankurichi Police Station)

Crime No.215 of 2010)

.. Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(ii) of the code of Criminal Procedure, praying to set aside the conviction imposed upon the appellants/accused No.1 and 2 in SC No.116 of 2011 on the file of the Principal Sessions Judge, Cuddalore District dated 18.01.2012.

For Appellants : Mr. M. Ravikumar

For Respondent : Ms.P.Krithika Kamal,
Government Advocate

J U D G M E N T

This Criminal appeal is directed against the Judgment of the trial Court, which has sentenced and convicted the appellants for the offences under Sections 294(b) of IPC and 3

(i) (x) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989.

2. The case of the prosecution is that when PW-1 along with her classmates were returning from school, the appellants were taking bath in the odai(rivulet) and had passed lewd comments. So, they reported the matter to their parents. Mothers of PW-1 and PW-2 went to the house of A1 and questioned about the obscene comments passed by the appellants. The 1st appellant has threatened them and also abused them calling by community name. Thereafter, complaint was made to the respondent police on 12.11.2010 and the same was registered. Investigation has been conducted by PW-11 Deputy Superintendent of Police, after getting authorisation from the Superintendent of Police, Cuddalore. Final Report has been filed against the appellants for the offences under Sections 294(b) of IPC and 3 (i) (x) and 3 (i) (xi) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989.

3. Before the trial Court, 11 witnesses were examined and 10 exhibits were marked. The trial Court, after considering the evidences has held that the accused were found guilty of the offences under Sections 294(b) of IPC and Section 3 (i) (x) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 and acquitted them for the offence under Section 3 (i) (xi) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 for want of proof.

4. The conviction and sentence of 3 months Simple Imprisonment against A1 and A2 for the offence under Section 294 (b) IPC and 2 years Rigorous Imprisonment each and fine of Rs.1000/-each for offence under Section 3 (i) (x) of Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989, this Criminal Appeal is preferred.

5. The learned Counsel appearing for the appellants would submit that the trial Court has miserably failed to consider the fact that even according to the complaint and deposition of witnesses, utterance of community name was only in the residence of A1/1st Appellant, which was not within the public view.

6. The accused ought to have been acquitted for the simple reason that the occurrence took place in the residence of A1 and not within the public view. When none of the witnesses have spoken about the presence of the public and PW-1 to PW-6 belong to same caste, who are all interested witnesses and related to each other cannot be considered as public.

7. Admittedly, A2 was not in the residence of A1. While so, when there is no evidence to show that A2 was present when abusive word calling the community was uttered by A1, the 2nd

appellant ought not to have been held guilty for the offence under Section 3 (i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. In support of his submission, the learned Counsel would also rely upon the Judgment of this Court rendered in Manimeglai and others v. State rep. by the Inspector of Police, Adhiyamankottai, Dharmapuri District, CrI.A.No.474 of 2009, dated 18.11.2016. In the said Judgment, the learned Judge, has relied the judgment of Delhi High Court, wherein it has been held as follows.

"19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (i) to (xv) of Section 3(i) of the Act enumerate various kinds of atrocities that might be perpetrated against Scheduled Castes and Scheduled Tribes, which constitute an offence. However, Sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of insult, "intimidation" and "humiliation" of a member of the Scheduled Casts or Scheduled Tribe in any place within "public view". Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has not to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i) (x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be), should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression "public view" by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within "public view" occurring in Section 3(i) (x) of the Act means within the view which includes hearing, knowledge or accessibility also, of a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people comprises anyone of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used."

9. So far as the charge under Section 294(b) of IPC is concerned, the learned Counsel appearing for the appellants would contend that odai(rivulet), where the appellants were taking bath was not within the view of the passerby. Admittedly, if anybody taking bath in the odai(rivulet), it could not be seen by passerby. PW-1 in her deposition has admitted that if a person taking bath in the rivulet, he cannot see the passerby. While so, the evidence of PW-1 and PW-2 and others regarding this charge lacks evidence. Therefore, the learned Counsel seeks the acquittal of the appellants by reversing the Judgment of the trial Court.

10. Per contra, the learned Government Advocate would submit that PW -1/Defacto Complainant had vividly deposed the sequence of events and the obscene words uttered by the appellants. She and her classmates went their home and reported the matter to their parents. The incident took place near Sunnambu Odai (rill/rivulet) on 12.11.2010 at about 5.30 pm, while they were returning from their school is spoken by PW-1/Suhasini, Defacto Complainant, PW-2/Thilagavathi, PW-3/Sumithra and PW-4 Keerthana. After hearing the obscene utterance of the appellants, they have reported the matter to their parents viz., PW-5-mother of PW 1 and PW-6-the mother of PW-2 and they all went to the house of A1 to question about their behaviour. At that time, A1 and A2 have insulted calling the community name. The victim belongs to scheduled caste community and the same is proved through the official witnesses and community certificate, which is marked as Ex.P.10.

11. Therefore, the learned Government Advocate relying upon these evidence would submit that the investigation has been done in accordance with the procedure laid down which has culminated in filing of final report indicating commission of offence by the appellants. Accordingly, charges were framed against them and duly proved by the prosecution. When PW-1 to PW-6 were present during the appellants uttering abusive words calling the community name, the necessary ingredients to attract Section 3 (i) (x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are fully satisfied and therefore, the appellants cannot take a plea that the said utterance was not within the public view. Hence, prayed that the conviction and sentence passed against the appellants are bound to be confirmed.

12. PW-1 is the Defacto complainant. She along with her classmates PW-2 to PW-4 were returning home on 12.11.2010, after attending the school, the appellants on seeing them were conversing between them using obscene words and making abusive comments on them. This fact is corroborated by PW-2 to PW-4 substantiating the averments found in First Information Report. The witnesses PW-1 to PW-4, who have suffered the obscene comments are students of 10 standard aged between 14 -15 years reported the matter to their parents. After that, PW-5 and PW-6 have gone to the house of A1. They have questioned about the obscene words passed by them. There is some contraction regarding presence of A-2 at that time. Even according to the prosecution, these appellants, when questioned by PW-5 and PW-6, have said that it was general comment made by them and they did not make any specific comment about PW-1 to PW-4. This explanation offered by the appellants to PW-5 and PW-6 cannot be exonerate them from the crime of 294(b) of IPC. The words uttered by these appellants towards the teenage girls returning from school are obscene and vulgery. It is no doubt offensive of these modesty.

13. As far as Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is concerned, the utterance of the community name to disgrace them has alleged to have taken place inside the house of A1. The presence of A2 is also being doubtful. In the First Information Report PW-1 has not stated that A2 was present at that time in the house of A1. The omission to specify the presence of A2 and the omission to substantiate the fact that the utterance was within the public view, entitles the appellants the benefit of doubt so far as the offence under Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, the evidence of PW-1 to PW-4 is sufficiently enough to hold them guilty for the offence under Section 294(b) of IPC. Therefore, by confirming the sentence and conviction imposed on

the appellants by the trial Court for the offence 294(b) of IPC, this Court sets aside the conviction and sentence imposed under Section 3(i)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

14. Accordingly, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellants and to commit them into the prison to undergo the remaining period of sentence imposed by the trial Court. The period of sentence already undergone by the accused is set off. Bail bond, if any executed by the appellants, shall be cancelled.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

vrn/ari

To

1. The Principal Sessions Court, Cuddalore.

2. The Deputy Superintendent of Police
Vridhachalam Circle, Cuddalore District
(Karuveppilankurichi Police Station).

3. The Public Prosecutor, High Court, Madras.

+lcc to Mr.M.Ravikumar, Advocate SR.No.13582

SAI (CO)
GMY (07/03/2019)

Cr1.A.No.124 of 2012

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