

Bail Slip

The Petitioner/Accused 1 to 3 namely 1. Suryamoorthy S/o.Kaliyan aged 33 years, 2. Parthiban, S/o. Panchamurthy, aged 24 years 3. Manivannan, S/o. Subramanian aged 28 years are released on bail by this Hon'ble Court in M.P.1/2012 in CrI.A.No.421/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2019  
DELIVERED ON: 19.11.2019

CORAM:  
THE HON'BLE MR.JUSTICE P.N.PRAKASH  
CrI.A.No.421 of 2012

1.Suryamoorthy  
2.Parthiban  
3.Manivannan ... Appellants/Accused 1 to 3

Vs.

State rep. By  
The Inspector of Police  
Orathur Police Station  
Cuddalore District ... Respondent/Complainant  
(Cr.No.39/2011)

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment in S.C.No.278 of 2011 dated 28.06.2012 passed by the Principal Sessions Judge, Cuddalore.

For Appellant : Mr.S.Vijayakumar  
For Respondents : Mr.P.Kritika Kamal  
Government Advocate (CrI.side)

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment dated 28.06.2012 passed by the Principal Sessions Judge, Cuddalore in S.C.No.278 of 2011.

2. The prosecution case is as follows:

2.1. Balasubramaniam (PW1) is the father of Kavibala (PW2) and Agalya (PW3). They are Dalits and are residents of Sakkangudi Village in Chidambaram Taluk. Balasubramaniam (PW1) was a school teacher. Suryamoorthy (A1) is the father of Parthiban (A2). Suryamoorthy (A1), Parthiban (A2) and

Manivannan (A3) are caste Hindus and they hail from South Street, Sakrangudi. Balasubramaniam (PW1) had given his land on fixed lease of Rs.20,000/-, towards which A1 had given Rs.14,000/- by cash and for the balance of Rs.6000/-, he had given half a sovereign gold jewel. PW1 had pledged that ornament. Suryamoorthy (A1) was demanding return of the ornament, which was not agreeable to PW1, because PW1 was insisting that A1 should pay the cash and take back the ornament.

2.2. While this dispute was blooming, it is alleged that on 06.03.2011, around 05.00pm, Suryamoorthy (A1), Parthiban (A2) and Manivannan (A3) came in a Bajaj CT 100 motorcycle, bearing Registration No.TN31 J 1981 (MO2), to the house of PW1 and abused him in vernacular by referring to his caste name and assaulted him with a stick. When his two daughters, Kavibala (PW2) and Agalya (PW3) intervened, they were also assaulted by the accused. When the injured made a hue and cry, neighbours rushed in and on seeing that, the accused abandoned the motorcycle and fled. All the three injured were taken to the Government Hospital, Chidambaram by 108 Ambulance and were admitted as in-patient. On intimation, the police came to the hospital and recorded the statement of PW1 (Ex.P1), based on which the police registered a case in Crime No.39 of 2011 on 06.03.2011 at 23.00 hours and prepared the printed FIR (Ex.P8), which reached the jurisdictional Magistrate on 07.03.2011 at 12.15 Noon. Investigation of the case was taken over by Natarajan (PW12), Deputy Superintendent of Police. He went to the place of occurrence and prepared the Observation Mahazar (Ex.P10) and Rough Sketch (Ex.P9). The police seized the motorcycle (MO2) under the cover of a Mahazar (Ex.P10) from the place of occurrence. The police arrested A1 and A2 on 07.03.2011 and on the confession of A1, recovered the stick (MO1) under Mahazar (Ex.P4) from the house of A1. After examining witnesses and collecting the Community Certificates of the parties, the police completed the investigation and filed a final report in P.R.C.No.18 of 2011 before the Judicial Magistrate II, Chidambaram for the offences under Sections 294 (b), 323 (3 counts), 506(i) IPC and Section 3 (i)(X) of Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 against Accused 1 and 2 and Sections 294 (b), 323 (3 counts), 506(i) IPC, Section 3 (i)(x) of SC/ST (POA) Act, 1989 and Section 4 of Tamil Nadu Prohibition of (Harassment of Women) Act, 1998 against Manivannan (A3).

3. On appearance of the accused, the provisions of Section 207 Cr.P.C was complied with and the case was committed to the Court of Session (Special Court for SC/ST (POA) Act, 1989 Cases), Cuddalore in S.C.No.278 of 2011 for trial. The trial Court framed the following charges:

| Accused        | Charges                                                                                                                                                             |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| First Accused  | Sections 294(b), 323 (3 counts), 506 (ii) IPC & Section 3 (i) (x) of SC/ST (POA) Act, 1989                                                                          |
| Second Accused | Sections 294(b), 323 (3 counts), 506 (ii) IPC & Section 3 (i) (x) of SC/ST (POA) Act, 1989                                                                          |
| Third Accused  | Sections 294(b), 323 (3 counts), 506 (i) IPC, Section 3 (i) (x) of SC/ST (POA) Act, 1989 and Section 4 of Tamil Nadu Prohibition of (Harassment of Women) Act, 1998 |

4. When questioned, the accused pleaded guilty. To prove the case, the prosecution examined 13 witnesses, marked Exs.P1 to P11 and MOs.1 and 2. When the accused was questioned under Section 313 Cr.P.C, he denied the same. No witness was examined on the side of the accused nor any document marked.

5. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 28.06.2012 in S.C.No.278 of 2011 acquitted the 1<sup>st</sup> accused of the offence under Sections 323 IPC (2 counts), 506(i) IPC and Section 3(1)(X) of SC/ST (POA) Act, 1989, the second accused of the offence under Section 323 IPC and 323 IPC (2 counts) and Section 3(1)(X) of SC/ST (POA) Act, 1989 and the third accused of the offence under Section 3(1)(X) of SC/ST (POA) Act, 1989, but convicted and sentenced Accused 1 to 3 as follows:

| Accused      | Provision under which convicted | Sentence              |          |
|--------------|---------------------------------|-----------------------|----------|
| Accused No.1 | Sections 294(b) IPC             | 3 months imprisonment | rigorous |
|              | Section 323 IPC                 | 3 months imprisonment | rigorous |
| Accused No.2 | Sections 294(b) IPC             | 3 months imprisonment | rigorous |
|              | Section 506(i) IPC              | 3 months imprisonment | rigorous |
| Accused No.3 | Sections 294(b) IPC             | 3 months imprisonment | rigorous |
|              | Section 323 IPC                 | 3 months imprisonment | rigorous |
|              | Section 506(i) IPC              | 3 months imprisonment | rigorous |

| Accused | Provision under which convicted                                        | Sentence                                                                                                        |
|---------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
|         | Section 4 of Tamil Nadu Prohibition of (Harassment of Women) Act, 1998 | 3 months rigorous imprisonment and fine of Rs.10,000/-, in default to undergo simple imprisonment for one month |

6. Challenging the conviction and sentence, the accused have filed this appeal.

7. Heard learned counsel for the appellants/accused and learned Government Advocate (Crl.side) for the respondent/complainant

8. The learned Government Advocate (Crl.side) submitted that A1 died on 01.01.2015 and submitted a copy of the Death Certificate. Since his legal heirs did not come forward to step into his shoes, the appeal as against A1 stands abated in terms of Section 394 Cr.P.C. The prosecution has proved beyond cavil the fact that Balasubramaniam (PW1), Kavibala (PW2) and Agalya (PW3) are Dalits and Suryamoorthy (A1), Parthiban (A2) and Manivannan (A3) are Caste Hindus by marking their Community Certificates (Ex.P11). This has not been disputed by the defence.

9. The learned counsel for the appellants contended that the complaint in this case is by way of a statement under Section 161(3) Cr.P.C and there is a delay in registration of the FIR, which is fatal. He has also contended that all the witnesses are interested witnesses and there is no independent witness. It is his further contention that the evidence on record shows that police had already come to the place of occurrence and therefore, the investigation had begun even before the formal registration of the FIR.

10. Per contra, the learned Government Advocate (Crl.side) refuted the contentions.

11. Balasubramaniam (PW1), in his evidence has stated that he is a Dalit; he knows the accused; he had given his land on fixed lease of Rs.20,000/- to Suryamoorthy (A1) for which Suryamoorthy (A1) had given Rs.14,000/- in cash and for the balance Rs.6,000/-, he had given a gold ornament, which he (PW1) had pledged; A1 was demanding the return of the gold ornament due to which there were disputes between them; on 06.03.2011, while he was lying on the pial of his house, Suryamoorthy (A1), Parthiban (A2) and Manivannan (A3) came there, woke him up,

called him by his caste name, abused him and assaulted him. PW1 has clearly stated that Suryamoorthy (A1) hit him with a stick, Manivannan (A3) punched him on his face and Parthiban (A2) brandished a knife and intimidated him; when his two daughters, Kavibala (PW2) and Agalya (PW3) intervened, Manivannan (A3) abused them by referring to their caste and slapped Agalya (PW3) and hit Kavibala (PW2) on her chest. In the assault, he (PW1) started bleeding in his eyes and therefore, Ambulance was called and they were all taken to the hospital. He identified the stick MO1, which was used by Suryamoorthy (A1) for the attack. Kavibala (PW2) was 19 years old and Agalya (PW3) was 14 years old when they gave evidence before the trial Court on 16.02.2012. These two witnesses have adequately corroborated the evidence of their father Balasubramaniam (PW1) about the attack by the accused. In fact, they have even stated that during the attack, Nagavalli, wife of A1 came to the place of occurrence and pacified her husband and took him away. This shows that they were not indiscriminately implicating the family members of A1.

12. Saroja (Pw6), Boopathi (PW7), Selvagandhi (PW8) and Asalambal (PW9) have stated that on hearing the commotion in PW1's house, they came there and saw the accused at the place of occurrence. The accused left the motorcycle and ran away and that has been seized by the police and marked as MO2.

13. The learned counsel for the appellants submitted that the Investigating Officer has not done any investigation with regard to the ownership of the motorcycle and therefore, it cannot be stated that the motorcycle belongs to the accused. It is true that the Investigating Officer had failed to gather materials on this aspect, but his failure by itself cannot lead to the inference that the accused did not come in the motorcycle, especially when the injured witnesses as well the other villagers have spoken to about the motorcycle. The reference to the motorcycle finds place even in the complainant (Ex.P1). Had the motorcycle belonged to someone else, who was not involved in the case, he would have approached the Court and got custody of it under Section 451 Cr.P.C. Failure of the police to investigate about the ownership of the motorcycle is only remissness in the investigation and that will not enure to the advantage of the defence. Same is the answer to the submission of the defence that the knife allegedly used by A3 was not recovered. Kavibala (PW2) and Agalya (PW3) have candidly admitted in the cross-examination that Balasubramaniam (PW1) would consume liquor. The defence was not able to make any serious dent in their testimonies.

14. The evidence of Dr.Saravanan (PW11) assumes importance. Dr.Saravanan has stated that on 06.03.2011, while he was on duty

in the Government Hospital, Chidambaram, he examined Balasubramaniam (PW1) and found the following injuries:

- (i) Swelling on the left eye
- (ii) pain over the chest
- (iii) pain over the head

The copy of the Accident Register was marked as Ex.P5.

15. On the same day at 06.20pm, he examined Kavibala (PW2) and found the following injuries:

- (i) Pain over the chest
- (ii) Pain over the right leg

The copy of Accident Register was marked as Ex.P6.

16. On the same day at 06.30pm, he examined Agalya (PW3) and noted the following injuries:

- (i) Pain over the right hand
- (ii) Pain over the chest

The copy of the Accident Register was marked as Ex.P7.

17. All the three were admitted as inpatient and while they were under treatment, intimation was sent to the police. Jayaraman (PW10), Special Sub-Inspector of Police, came to the hospital and recorded the statement of PW1 (Ex.P1) and registered the FIR. Thus the evidence of PW1, PW2 and PW3 about the injuries suffered by them finds corroborated in the evidence of Dr.Saravanan (PW11).

18. It is true that in the top portion of Ex.P1, Section 161 (3) Cr.P.C is quoted, but that by itself will not make it inadmissible, because the FIR in this case was registered only subsequently based on the statement so recorded by Jayaraman (PW10).

19. The learned counsel for appellants contended that the police had already come to the spot and therefore, the earlier FIR has been burked. In this regard, no question has been put either to Jayaraman (PW10), Special Sub-Inspector of Police, who registered the FIR or to the Investigating Officer that the investigation had begun even before the registration of the FIR. The police on rounds came to the place of occurrence to diffuse the situation and send the injured to the hospital. That would not mean that investigation had begun before the Registration of the FIR. Even if this Court agrees with this submission of the learned counsel for the appellants, that will not make the evidence of the three injured witnesses and the evidence of Dr.Saravanan (PW11) suspect.

20. Coming to the contention of the learned counsel for the appellants that all the witnesses are interested witnesses, suffice it to repel this contention with the following sapient

words of Vivian Bose J. in Dalip Singh and 3 others vs. State of Punjab (AIR 1953 SC 364):

"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."

21. Though there is sufficient evidence for convicting the accused of the offences under Section 3(i)(X) of the SC/ST (POA) Act, 1989, the trial Court has acquitted them of the said offence on the reasoning that the Deputy Superintendent of Police, who investigated the case, did not have necessary authorization from the Superintendent of Police. Today, this ground has no locus standi in view of the judgment of the Supreme Court in State of Bihar & Ors. Vs. Anil Kumar AIR reported in AIR 2017 SC 2716. As the State has not filed any appeal against the acquittal, this Court cannot disturb the acquittal of the accused of the offence under Section 3 (i)(x) of SC/ST (POA) Act, 1989.

22. As regards the delay in the registration of the FIR, it is seen that after the incident, the injured were taken to the hospital and when they were under treatment, on intimation, the police came there, recorded the statement of PW1, went back to the police Station and registered the FIR.

23. Under the facts and circumstances of this case, it cannot be stated that there is delay in registration of the FIR. Be it noted, delay in lodging the complaint cannot be said to be fatal in every case as held by the Supreme Court in Ravinder Kumar and another vs. State of Punjab [(2001) 7 SCC 690] and whether the delay in lodging the complaint vitiates the prosecution case or not depends on facts and circumstances of

each case and there cannot be a strait-jacket approach in this regard.

In the result, the appeal is devoid of merits and the same is dismissed. The trial Court is directed to secure the accused 2 and 3 and commit them to prison for serving out the sentence. The period already undergone shall be set off. Registry is directed to send the original records to the trial Court forthwith.

s/d-  
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

gpa  
To

- 1.The Principal Sessions Judge  
Cuddalore.
- 2.The Chief Judicial Magistrate  
Cuddalore(for information)
- 3.The Judicial Magistrate No.II  
Chidambaram
4. The Inspector of Police  
Orathur Police Station  
Cuddalore District
5. The Public Prosecutor  
Madras High Court  
Chennai

Copy to

The Section officer  
Criminal Section  
High Court, Madras 104.

+1 CC to Mr.S.Vijayakumar,Advocate sr 95842.

Cr1.A.No.421 of 2012

SJ(CO)  
SP(17/12/2019)