

Bail Slip

The Petitioner/Accused 1 to 3 Viz., 1.Krishnan S/O Appunu 2.Kasthuri W/O Krishnan 3.Krishnan S/O Venkatappa Naikar were released on bail as per of order of this Court dated 04/12/2012 in CrI.M.P.No.1/12 in CrI.O.P.No.826/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.03.2019	Pronounced on: 22.03.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.826 of 2012

1. Krishnan,
S/o.Appunu.
2. Kasthuri,
W/o.Krishnan.
3. Krishnan,
S/o.Venkatappa Naikar

... Appellants/Accused 1 to 3

/versus/

State represented by:
The Inspector of Police,
Mathur Police Station,
Krishnagiri District.
(Crime No.703 of 2008)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, praying against the judgement of conviction and sentence passed by the Learned Principal District and Sessions Judge, Krishnagiri, dated 12.10.2012 made in S.C.no.110 of 2011.

For Appellants : Mr.G.Jayachandran

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (CrI.Side)

J U D G M E N T

The appellant herein are the accused in S.C.No.110 of 2011 on the file of Learned Principal District and Sessions Judge, Krishnagiri. They were charged for offences under sections 323, 324, 323 r/w 34 IPC and 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989 and found guilty. Hence, the present appeal.

2. The case of the prosecution:

On 4.11.2008, the respondent police registered a complaint given by one Raman alleging that on 01.11.2008, at about 17 hours while he was cleaning the land allotted to his wife by the government, the accused persons 1.Krishnan, S/o.Appunu, 2.Kasturi and 3.Krishnan, S/o.Venkatappa Naidu came to the land. Questioned Raman, why he is cleaning their land. A1-Krishnan attacked Raman with Koduval and assaulted with hand on his chest. A2-Kasthuri kicked Andal W/o.Raman on her chest and back. A2-Kasthuri also abused Andal, a member of the Schedule Community by vulgar and filthy words with the intention to insult her. The Inspector of police attached to Mathur Police station, Krishnagiri District, registered the case in Crime Number. 703 of 2008. The Superintendent of Police authorised the Deputy Superintendent of Police, to investigated the case.

3. On completion of investigation the final report was filed. To prove the case, prosecution has examined 11 witnesses and marked 17 exhibits.

4. Raman (PW-1) has deposed that when he and his wife Andal (PW-2) cleaning the piece of land allotted to them by the Government , 1) Krishnan, S/o. Appunu, 2) Kasthuri, W/o. Krishnan and 3) Krishnan, S/o. Venkatappa Naidu came and questioned him why they are cleaning up their land. The 1st accused (Krishnan) called them by community name to insult and attacked Raman (PW.1) with koduval. When Raman (PW.1) tried to defend, he got injured in his right hand. When Andal (PW.2) came to rescue her husband Raman (PW.1), the 2nd accused (Kasthuri) scolded her in filthy language insulted her uttering the community name and kicked her on the chest and back. The 3rd accused (Krishnan, S/o.Venkatappa Naikar) scolded them using community name. Then, Raman (PW.1) and Andal (PW.2) tried to leave the place, to go to the hospital. They were not able to move. So, they shouted. Hearing their cry, Mayavan and Kumaresan (PW.3) came and took them to Mathur Hospital. The Police enquired them and recorded the statement.

5. Andal (PW.2), wife of Raman (PW.1) while corroborate the other portion of the evidence of Raman (PW.1), not corroborated the evidence of PW-1 about the use of filthy or insulting words by A-1 and A-3. When Kumaresan (PW.3) who came to the spot on hearing the noise had spoken only about the fact that he saw Raman (PW.1) with bleeding injury. He took both Raman (PW.1) and Andal (PW.2) to the Mathur Hospital. Murugan (PW.4) is the witness to the observation mahazar prepared by Swaminathan (PW.11) Deputy Superintendent of Police. The rest of the prosecution witnesses are:

1) The Revenue Officers who gave the community certificates for the accused, the prosecution witnesses Raman (PW.1) and Andal (PW.2).

2) The Village Administrative Officer of the village, to prove the grant of free land to Andal (PW.2) by the Government under Ex.P-3 and the field map and;

3) The Police Officers who have registered the case and investigated.

6. The trial Court, after considering the evidence relied by the prosecution, held the charges proved. Convicted the 1st accused for the offence under section 324 and 323 IPC. 2nd accused was convicted for offences under section 323 IPC and section 3(1) (X) of SC/ST (Prevention of Atrocities) Act. 3rd accused was convicted for offence under section 323 r/w 34 of IPC.

i). Sentenced A-1 to undergo one year R.I. and to pay a fine of the Rs.1,000/- in default to undergo simple imprisonment for three months for the offence under section 324 I.P.C. Sentenced to undergo three months imprisonment and fine of Rs.500/-, in default to undergo simple imprisonment for the offence under section 323 I.P.C.

ii). Sentenced A-2 to undergo three months simple imprisonment and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one week for offence under section 324 IPC. Sentenced to undergo two years R.I and to pay a fine of Rs.10,000/-, in default to undergo six months S.I for the offence under section 3(1)(x) of SC/ST Prevention of Atrocities Act.

iii). Sentenced A-3 to undergo three months imprisonment and to pay a fine of Rs.500/- and in default to undergo simple imprisonment for one week for offence under section 323 r/w 34 of I.P.C.

7. Aggrieved by the conviction and sentence the present appeal is filed on the ground that the judgement of the court below is against the law, weight of evidence and probability. Relying upon the interested witnesses namely Raman (PW-1) and Andal (PW-2), the trial Court has held them guilty and convicted the appellants. The place of occurrence alleged to have taken place is the land of the accused which is claimed by Raman (PW-1) and Andal (PW-2). It is not a public place or within the public view. Therefore, the ingredient to attract section 3 (1)(X) of SC/ST Act is absent. The delay in registering the First Information Report and examining the witness not properly explained. The trial court failed to take note of it. The Court below failed to consider the injuries sustained by the 2nd accused (kasthuri). The defacto complainant attacked the 2nd accused and caused injury. For treatment, the 2nd accused was admitted in the hospital and a complaint was given to the respondent police about the incident. Though, the respondent police registered the said complaint against the de facto complainant, it failed to investigate the counter case and place the records before the trial court. The alleged weapon used to cause grievous hurt not recovered. The prosecution has not proved their case through acceptable independent witnesses.

8. Per contra, the Learned Government Advocate (Crl.Side) submit that the Government granted Patta to Andal (PW-2) in the year 2007. The Manoharan, Village Administrative Officer of the village was examined as PW-5 and proved the fact about issuance of the Government Order and Patta to Andal (PW-2). The field sketch, Adangal are marked through these witnesses as Ex.P.3 to Ex.P.7. The first accused was in the illegal occupation of the Government land allotted to Andal (PW-2). Later, when Raman (PW-1) went to take possession, he was attacked by the accused.

9. The accident report of Raman (PW-1) is marked as Ex.P.14. The doctor who treated Raman (PW-1) has been examined as a prosecution witness PW-10. The accident report proves that on 01.11.2008, Raman (PW-1) and his wife Andal (PW-2) came for treatment for the injuries sustained with alleged history of assault by two persons. Raman (PW-1) has informed the doctor that he was assaulted by two persons with stone, Koduval and hand. Andal (PW-2) has informed the doctor, she was assaulted by two know persons with hands. The injuries found on PW-1 was noted by Dr.Shanmugam (PW.10). The wound certificate of Raman (PW.1) is marked as Ex.P.14. The wound certificate of Andal (PW-2) is Ex.P.15. These two documents clearly show that on 01.11.2008, Raman (PW-1) and Andal (PW-2) gone to the hospital for treatment of the injuries caused by two persons.

10. The community certificate issued by the Tahsildar for the accused persons is marked as Ex.P.11 to Ex.P.13, which indicates that the accused persons belong to non-scheduled community. Chandra Mohan (PW-6) has issued the community certificates for Raman (PW-1) and Andal (PW-2) which are marked as marked as Ex.P-8 and Ex.P-9. These two documents indicates that they belong to a schedule community.

11. Summing up, the Learned Government Advocate (Crl.Side) would submit that the trial court, after appreciating the evidence both oral and document has rightly held that the guilty of the accused persons are proved. Therefore, contended that the trial court judgement has to be confirmed.

12. Heard the respective counsels and perused the records.

13. The alleged incident has taken place on 01.11.2008, at about 8.00 hours. Ex.P-14 and Ex.P-15 are the wound certificates issued by Dr.Shanmugam, (PW-10). From these two wound certificates, we find that Raman (PW-1) and Andal (PW-2) had gone to the Government Hospital for treatment to their injuries. Raman (PW-1) has informed Dr.Shanmugam, (PW-10) that two known persons assaulted him with stone, koduval and hand. Andal (PW-2) had informed the doctor that she was assaulted by two known persons with hands. The First Information Report reveals that statement of Raman (PW.1) was received at the hospital on 01.11.2008, at about 18.00 hours. The police has registered CSR.No.404 of 2008. Thereafter, the First Information Report has been registered after three days, on 04.11.2008 at 17.00 hours.

14. The contention of the learned counsel appearing for the appellants is that there was delay in registering the First Information Report and the said delay was not explained. This contention appears to be not correct. From the records, it is seen that C.S.R.No.404 of 2008 was registered, soon after the receipt of the statement of Raman (PW-1) from the hospital as early as 01.11. 2008, at about 18.00 hours. Bopalan (PW.8), the Inspector of Police has registered the First Information Report on 04.11.2008. PW.8, in his deposition had stated that while he was working as Inspector in the Mathur Police Station, the complaint received by the Head Constable Gajendiran (PW.7) and registered as C.S.R.No.404 of 2008 was brought to his notice on 04.01.2008, thereafter, he registered the complaint in Crime Number.703 of 2008 for offences under Sections 324, 323 and 3(1) (x) of SC/ST (Prevention of Atrocities) Act. He has immediately forward a copy of the F.I.R to the concerned Judicial Magistrate and Deputy Superintendent of Police. The scrutiny of F.I.R,

which is marked as Ex.P.10 indicates that it was forwarded to the Judicial Magistrate on 05.11.2008. The Judicial Magistrate has fixed initial and date along with the Court seal.

15. It is suggested to the Investigation Officer in the cross examination that Kasthuri (A-2) sustained injury and was admitted in hospital. Though, the counter case was registered by the police in this connection, it was not properly investigated and I.O not placed those records before the trial Court for proper appreciation of facts. It is suggested to Gajendran, (PW-7) that he obtained the LTI of Raman (PW.1) in a blank paper and prepared the statement (Ex.P.1) later. Regarding the counter complaint, alleged to have been given by Kasthuri (A-2), both Gajendran (PW-7) who registered the statement of Raman (PW-1) and Swaminathan (PW-11), the Investigating Officer had expressed their ignorance about the Crime No.195 of 2009 registered, based on the complaint of Kasthuri (A-2). However, it has been specially put to the witness that based on the complaint given by A-2, the respondent police has registered a case and in Crime No.195 of 2009.

16. In the course of the argument, the learned counsel appearing for the appellant would submit certain documents pertaining to Crime No.195 of 2009, which was obtained through Right to Information Act. These documents does not form part of the Exhibits or material part of records. Therefore, this Court directed the learned Government Advocate (Crl.Side), to verify from the Case Diary about the fate of the said complaint. The Learned Government Advocate, after verifying the records would submit that the said complaint was closed as mistake of facts. Further, she states that Kasthuri (A-2) has sent a complaint through post to the Commissioner of Police on 18.12.2008. Based on the complaint, the First Information Report was registered on 22.03.2009 in Crime No.195 of 2009, against Raman (PW.1) and Andal (PW.2), after investigation, it was closed as mistake of facts.

17. The charge against the appellants is for causing hurt using dangerous weapon and insulting PW.1 and PW.2 using their communal name. There is unexplained delay in registering the First Information Report, though it appears the complaint from Raman (PW-1) was received on 01.11.2008 itself. The thumb impression found in the statement and the contradictions of PW-1 and PW-7 about the time and place of recording the statement, leads to suspicion.

18. The embellishment and contradictions in the evidence of PW-1 and PW-2, coupled with the fact that the injury sustained by Kasthuri (A-2) being suppressed all put together cause grave doubt about the prosecution case. Whether it was the defacto complainant or the accused was the actual aggressor in this case, could not be made out without the records connected with the Crime No.195 of 2009, which alleged to have taken place during the same transaction. Further, the wound certificate of PW-1 indicates aberration on the right forearm and complaint of pain. Whereas, the wound certificate of Andal (PW-2) indicates only pain over her chest and back. Though Raman (PW-1) and Andal (PW-2) alleged that they were attacked by Koduval by Krishnan (A-1), no evidence placed by the prosecution to substantiate and prove the allegation.

19. In respect of the offence under section 3(1)(x) of SC/ST Act, the required ingredient is the insult or intimidation should be made intentionally in any place within public view. Admittedly both Raman (PW-1) and Andal (PW-2) has said that while the accused attacked them and abused them, none else was present. It is clearly elicited through the witnesses that the occurrence was not made in public view.

20. From the evidence and records, it is established that the prosecution has failed to place the entire investigation records before the trial court. They have suppressed the injury on Kasthuri (A-2). The incident has not been witnessed by any other persons. It has occurred in the absence of public view. Therefore, even if anything said, whether it was said with intent to humiliate in front of others is not proved. Hence, the benefit of doubt has to be extended to the appellants.

21. The trial Court has failed to see that admittedly the incident has taken place when none else was present. Except the self serving evidence of Raman (PW-1) and Andal (PW-2), which also bristles with contradictions, there is no other piece of evidence to corroborate. The respondent police has not registered the First Information Report immediately after recording the statement of Raman (PW-1). The statement of Raman (PW-1) with his LTI, when he is capable of signing, suppression of the complaint of Kasthuri (A-2) and false implication of Krishnan (A-3) against whom no overt act attributed by the witnesses are factors which exposes the embellishment in the complaint on advice. As a result, the trial court judgment is to be set aside.

22. Accordingly, the Criminal Appeal is Allowed. The Conviction and Sentence passed by the trial Court is hereby set aside. Fine amount paid, if any, shall be refunded to the accused. The Bail Bond stands discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To,

1. The Principal District Sessions Judge,
Krishnagiri.
2. The Government Advocate (Crl.Side),
High Court, Madras.
3. The Inspector of Police,
Mathur Police Station, Krishnagiri District.
4. The Section Officer,
Criminal Section (Records), High Court, Madras.
- 5.The Chief Judicial Magistrate,
Krishnagiri District.
- 6.The Judicial Magistrate,
Krishnagiri District.

+1cc to Mr.G.Jayachandran, Advocate Sr.27793

Criminal Appeal No.826 of 2012

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