

Bail Slip

The Appellant/Accused namely Tamilselvan(m) age 35 years S/o Ramanjuam was released on bail in Crl.MP No.1 of 2013 in Crl.A.492/13 vide Court order dated 22/07/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 19.09.2018	Date of pronouncing Judgment 07.11.2019
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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.492 of 2013

Tamilselvan

.. Appellant/Accused

Versus

The State of Tamil Nadu
represented by
The Deputy Superintendent of Police
Jeyankondam Police Station
(Crime No.283 of 2012)

.. Respondent /Complainant

Appeal filed under Section 374 (2) of Cr.P.C. against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Ariyalur Division, Ariyalur District, in Special Sessions Case No.1 of 2013 dated 26.06.2013.

For Appellant : Mr.K.M.Subheramaniam

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl. Side)

Judgment

The respondent police registered a case against the appellant in Crime No.283 of 2012 for the offences under sections 294(b) and 506(ii) IPC and also Section 3(1)(x) of SC/ST Act, 1989. The respondent police after investigating the matter, laid the charge sheet before the learned Judicial Magistrate, Jayamkondam and the learned Judicial Magistrate, after taking the charge sheet on file in PRC No.39 of 2012, since the offences are triable by the Court of Sessions, committed the case to the Special Court for SC/ST Cases, Ariyalur. The learned Special Judge, Ariyalur, after taking the case on file in Special S.C.No.1 of 2013 and after completing

the formalities, framed the charges against the appellant for the offences under sections 294(b) and 506(ii) IPC and also Section 3(1)(x) of SC/ST Act, 1989.

2. In order to prove the case of prosecution, during the trial, on the side of prosecution, as many as 11 witnesses were examined as PW.1 to PW.11 and 7 documents were marked as Exs.P1 to P7 and no Material Object was marked. After completing the prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused/appellant, he denied as false. On the side of defence, no oral and documentary evidence was produced.

3. After completing trial and hearing the arguments advanced on either side and perusing the oral and documentary evidences, the learned Special Judge found the accused/appellant guilty for the offences under sections 294(b) and 506(ii) IPC and also Section 3(1)(x) of SC/ST Act and sentenced him to pay a fine of Rs.1,000/- under Section 294(b) of IPC, to undergo rigorous imprisonment of two years and to pay a fine of Rs.1,000/- under Section 3(1)(x) of SC/ST Act and also to pay a fine of Rs.1,000/- under Section 506(ii) IPC, in default to remit the fine amount, the accused is to undergo one month simple imprisonment.

4. Aggrieved over the same, the convict has filed the present appeal before this Court.

5. It is seen from the records, the Deputy Superintendent of Police, Jayamkondam Division, Ariyalur District registered a case and laid a final report against the appellant stating that since the defacto complainant did not oblige the appellant by letting in evidence in the divorce case between the appellant/accused and his wife, emerged by the same, on 25.04.2012 at about 11 a.m, the appellant holding the cycle chain, had gone to the defacto complainant's house and scolded him as 'son of Irular prostitute and son of the woman living in a hut' and further, he threatened that he would kill him and bury him in the cashew garden (thoppu) and he scolded by referring the caste of the defacto complainant, thus he laid a charge sheet before the learned Judicial Magistrate and the learned Judicial Magistrate also after completing the formalities, committed the case to the designated Court and also the designated Court, after trial, convicted the appellant.

6. The learned counsel for the appellant would submit that PWs.1, 2, 3, 4 and 5 are the interested witnesses and they are none other than wife, maternal uncle and nephews and close relatives of the defacto complainant. There is no corroboration among these witnesses with regard to material particulars.

There is full of contradictions to each other in respect of crucial aspects. The case of the prosecution stands on the main allegation that PW.1 has a strong motive against the appellant and deposed in an inimical manner and has a strong animosity against the appellant with regard to constructing a water tank in the village. PW.1 - the defacto complainant wanted to construct the water tank in his colony, whereas the appellant and the villagers wanted to construct the same in the inhabitant of the appellant. Accordingly, the water tank was constructed in the area of the appellant. Therefore, to wreck vengeance, the defacto complainant had given a false complaint taking advantage of his caste. Further, there was a small two wheeler accident, in which the appellant and one Ranganathan got injured. The said Ranganathan belongs to the caste of PW.1 and by taking advantage, PW.1 had brainwashed the said Ranganathan to file a case against the appellant. Since Ranganathan had settled the issue amicably, PW.1 got enraged against the appellant and in such animosity, he had given a false complaint.

7. The learned counsel for the appellant would further submit that even according to PW.1, he lodged a complaint only on 27.04.2012 at 2 p.m, after a lapse of 2 days and 3 hrs from the time of alleged occurrence. Admittedly, there was an inordinate delay in giving the complaint and the prosecution has not satisfactorily explained the delay.

8. The learned counsel for the appellant would also submit that there is no allegation of abuse. PW.1 had deposed, for the first time, before the Court that he had informed the abuse to the elders of the village. No one of such elders was examined by the Investigating Officer-PW.11 and there was nothing stated in the complaint. PW.2, the wife of PW.1, says that the complaint was lodged immediately on 25.04.2012 itself and whereas PW.3 also says that the complaint was lodged within 1 or 2 hours from the time of the occurrence, the complaint was really lodged after two days. Therefore, it is clearly evident that the complaint itself is a fabricated one suppressing the origin and genesis of the prosecution case.

9. Further, the learned counsel for the appellant would submit that PWs.1 and 2 have come forward with improved versions in so many aspects for the first time before the Court, to strengthen their case. PW.3 says the appellant had scolded generally in the street and not against anyone particularly. PW.4 says that the accused used filthy language and questioned PW.1 - Are you a leader ? but, he did not mention anything about the caste of PW.1. PW.5 had stated that the accused was standing in a corner of the street and scolded generally and gone away and he did not go to the house of PW.1 or abused him. Also PW.5 did not mention the presence of PWs.1 and 2 at the

time of occurrence. PW.10- Tahsildar had given a 'Single Community Certificate' (Ex.P5) for both the complainant and the appellant and he had also admitted in his cross examination that he did not attach the certificate of Village Administrative Officer and Revenue Inspector. The Investigating Officer took up the case for investigation on 27.04.2012 and has completed his investigation on the next day itself i.e., on 28.04.2012 and filed a final report before the learned Magistrate. Therefore, the Investigating Officer has not properly investigated the matter and hurriedly recorded the statements and also filed the charge sheet. Further, there is material contradictions between the prosecution witnesses. The learned Sessions Judge failed to consider all the facts and convicted the appellant, which warrants interference of this Court.

10. The learned Government Advocate (Crl. Side) would submit that the prosecution has clearly established the motive and enmity between the appellant and the defacto complainant - PW.1 and also proved its case beyond reasonable doubt and the evidence of PW.1 was corroborated with other prosecution witnesses P.Ws.2, 3, 4 and 5. It is settled law that there is no bar to believe the evidence of witnesses, since because they are related to the defacto complainant. PW.1 has clearly stated about the complaint given and the delay has been explained and the prosecution has established its case with cogent and convincing evidences and nothing to establish by the defence to disbelieve the case of the prosecution and to discard the evidence of PW.1. Though the learned counsel for the appellant pointed out the discrepancies here and there, which are only minor contradictions, which will not be the material contradictions and affect the case of the prosecution. Therefore, the trial Court has rightly appreciated the entire evidence and also has given cogent reasons to convict the appellant for the charged offence and there is no merit in the appeal and there is no reason to interfere with the judgment of the trial Court.

11. Heard both and perused the records.

12. The case of the prosecution is that the appellant belongs to Hindu-Vanniar Caste of Devanur Village of Udaiyarpalayam Taluk and PW.1 belongs to Hindu-Schedule Tribe of Irular Community. Since PW.1 did not oblige the accused by letting in evidence in the divorce case of the appellant, enraged by the same, on 25.04.2012 at about 11 a.m, the appellant, holding a cycle chain, had gone to the house of PWs.1 and 2 and scolded PW.1 insulting his caste and in filthy language. The appellant also further threatened PW.1 that he would kill him and bury him in the cashew garden. Thus, the appellant has committed the offences punishable under Sections

294(b) and 506(ii) IPC r/w. 3(1)(x) of SC/ST Act.

13. In this case, the complainant was examined as PW.1. He has clearly deposed about the motive behind the case that a divorce case was pending in between the appellant and his wife in Ariyalur Court. On the instruction of the Advocate for the appellant, to secure two witnesses for his side, the appellant approached PW.1 for giving evidence in favour of him in the Court, for which PW.1 refused to oblige, since he did not know the wife of the appellant. The uncle of PW.1 used to work in the land of the appellant. The appellant requested to arrange atleast the said uncle as a witness to his side, for which PW.1 had refused to oblige. Such refusal to oblige the appellant led to the appellant lamenting that in the event if he had let in evidence in support of him, the case would have ended favourably to his side. Keeping this in his mind, the appellant indulged in petty quarrel with PW.1 on several occasions. On 25.04.2012 at about 11 a.m, when PW.1 along with his wife were preparing to proceed to the hospital to administer injection to their child, by that time, the appellant came in TVS Bike from the eastern side, stopped the vehicle at the corner of the street and took out a cycle chain from the side box of the bike and scolded PW.1 calling him 'Irula Paiya' and uttering filthy words, came near his house. Further, he scolded with filthy language and also degraded his caste and also threatened that he kill him by chopping him in the cashew garden and buried him therein and also threatened with dire consequences. Even prior to this occurrence, on one another occasion, when PW.2 was alone in the house, the appellant had scolded her. After happening of this occurrence, P.Ws.1 and 2 went to the hospital. Then they informed the matter to the elders in the village and requested to take action against the appellant. After two days, the elders in the village informed that the appellant not obliged to hear their advice. Therefore, he chooses to prefer a complaint Ex.P1 before Jayamkondam Police Station. The Deputy Superintendent of Police, after taking the cognizance of the offence, investigated the matter, recorded the statements and laid charge sheet.

14. Wife of PW.1 was examined as PW.2 and she has corroborated the evidence of PW.1 and supported the case of the prosecution. PW.3, neighbour of PWs.1 and 2, has also corroborated the evidence of PWs.1 and 2 and supported the case of the prosecution. PW.4 and PW.5 also have deposed that they have seen the occurrence and also they have corroborated the evidence of PW.1 and supported the case of the prosecution. Even though PWs.6, 7 and 8 have turned hostile, but PWs.1, 2, 3, 4 and 5 have clearly stated about the occurrence and also spoken about the attitude of the appellant and also clearly supported the case of the prosecution.

15. The learned counsel for the appellant vehemently contended that though the occurrence said to have taken place on 25.04.2012 at about 11 a.m, but whereas the complaint was given only on 27.04.2012 and the delay was not explained and the unexplained delay was fatal to the case of the prosecution. But on reading of the evidence of PW.1, he has clearly stated that soon after the occurrence, immediately he informed to the elders of the village. Admittedly, in this case, there is no injury and there is no assault. It is the specific case of the prosecution that since because PW.1 has not supported the appellant in his matrimonial case and stood as a witness and favour him, enraged by the same, the appellant scolded PW.1 and, also in one occasion, PW.2 and they also informed the same to the elders and after two days, the elders also informed him (PW.1) that the appellant did not took the advice of the elders and also they advised PW.1 that if he want, he can move the police for action, therefore, he had gone to the extent of filing the complaint. Therefore, the mere delay in preferring the complaint is not sufficient to disbelieve the case of the prosecution or discard the evidence of PW.1. Further, it is also to be noted that in the villages, any suppressed community suffered like this, immediately they will not rush to the police station for action and they used to submit their grievances to the elders of the village and if they do not get the relief through the elders, then only, on the instructions of the elders, they proceeded further. In this case, PW.1 intimated the incident before the elders and thereafter, the elders informed PW.1 that the appellant is not ready to hear their advice, therefore, they left PW.1 to act as per his wish and therefore, he approached the police station and in this case, there is no unexplained delay and therefore, the defence taken by the appellant is not admissible.

16. Further, though the prosecution has given the main motive that when the appellant sought help of PW.1 to stand as witness in his matrimonial case, PW.1 refused to oblige him, to which, the appellant has not even put a suggestion during the cross examination and therefore, it is undisputed fact that there is a matrimonial dispute between the appellant and his wife and therefore, the prosecution has established the motive behind the occurrence.

17. On reading of the evidences of PWs.1, 2, 3, 4 and 5, the prosecution has established its case with cogent and reliable evidence. Though the appellant has vehemently contended that all the above said witnesses are relative witnesses and therefore, they are interested witnesses, it is also well settled law that merely because the witnesses are relatives, that may not be the sole ground to disbelieve the

evidence of prosecution witnesses as they are interested witnesses. Further, it is pertinent to note that in the offences like this, certainly other persons or other community people will not come and give evidence and support the case of the prosecution; naturally the same community people or relatives only can say about the occurrence. In this case, admittedly PW.1 has clearly narrated the occurrence and also PWs.2, 3, 4 and 5 have also corroborated the evidence of PW.1 and therefore, the trial Judge has gone into the matter and discussed elaborately and given answers for all the defence taken by the appellant.

18. The learned counsel for the appellant placed reliance on the following judgments of the Hon'ble Apex Court as well as this Court :-

(i) 2016 (2) Madras Weekly Notes (Cr.) 634 (Chinnathambi and another ..vs.. State represented by the Deputy Superintendent of Police, Chengam, Tiruvannamalai District);

(ii) AIR 2011 Supreme Court 1905 (Asmathunnisa ..vs.. State of Andhra Pradesh represented by the Public Prosecutor, High Court of Andhra Pradesh and another);

(iii) Indian Kanoon.org/doc/132896751 (V.Ponnusamy ..vs.. State represented by Deputy Superintendent of Police, Coimbatore District);

(iv) 2017 (1) MWN (Cr.) 334 (DB.) (Sivakumar and others ..vs.. State by the Inspector of Police, Andimadam Police Station, Ariyalur District)

19. There is no quarrel with the propositions laid down in the above said decisions. The facts and circumstances involved in those cases are not identical to the facts of the present case and the facts and circumstances of the present case are entirely different from those cases. Therefore, the decisions relied on by the learned counsel for the appellant are not applicable to the present case.

20. This Court also, as Appellate Court, re-appreciated the entire evidence independently and has come to the independent conclusion that the appellant has committed the offences charged against him and he found guilty for the above said offences and there is no perversity in appreciation of the evidence by the trial Court and there is no strong ground to interfere with the judgment of the trial Court. In these circumstances, there is no merit in the Appeal and the Appeal is devoid of merits and liable to be dismissed and accordingly, the Appeal is dismissed.

21. In the result, the Criminal Appeal stands dismissed and the conviction and sentence passed by the learned Principal Sessions Judge, Ariyalur Division, Ariyalur District, in Special

Sessions Case No.1 of 2013 dated 26.06.2013 is hereby confirmed. The period of sentence already undergone, if any, by the appellant / sole accused shall be set off under Section 428 Cr.P.C. The trial Court is directed to take effective steps to secure the accused to undergo the remaining period of the sentence.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Jayamkondam.
2. The Chief Judicial Magistrate, Perambalur.
3. The Public Prosecutor,
High Court, Chennai.
5. The Principal Sessions Judge,
Ariyalur Division,
Ariyalur District.
4. The Deputy Superintendent of Police
Jeyamkondam Police Station.

Cr1.A.No.492 of 2013

VG II (CO)
GMY (06/12/2019)

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