

**Bail Slip**

The Appellant Namely O.UkkirapandianM/28 S/o.Ochanan was directed to be released on bail as per the order of this Court dated 13/9/2013 in CrI.M.P. No.1/2013 in CrI.A.No.596/2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2019

PRONOUNCED ON : 19.03.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.596 of 2013

O.Ukkirapandian

..Appellant/Accused

Vs

State rep. By  
The Assistant Commissioner of Police,  
Egmore Range,  
F1, Chindadripet Police Station,  
Chennai.

..Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374 Cr.P.C., to call for the records in connection with judgment dated 19.08.2013 in S.C.No.80/2009 on the file of the learned Special Judge at Chennai under the S.C. & S.T (Prevention of Atrocities) Act, cum Principal Sessions Judge, Chennai and set aside the same and acquit the appellant from the charges levelled against him.

For Appellant : Mr.C.D.Johnson for C.Sivakumar

For Respondent : Mrs.Kritika Kamal.P,  
Government Advocate (crl.side)

**JUDGMENT**

This Criminal Appeal is directed against the judgment of the learned Special Judge at Chennai under S.C. & S.T. (Prevention of Atrocities) Act, Principal Subordinate Judge, Chennai, in S.C.No.80 of 2009 dated 19.08.2013.

2.The charge against the accused/appellant was that on 29.09.2008 at about 7.00 pm, at Door No.16/20, Palani Andavar St, Chintadripet, Chennai, while he was working as Branch Manager of Ashirwath Micro Finance (P) Ltd., assaulted Karpooora Sundara Pandian (P.W.1), kicked him on his chest and insulted him, calling his caste name thereby committed offence under Section 3(1)(x) of Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "SC & ST (Prevention of Atrocities) Act"). Prior to that, on the same day, at 5.30 pm, near 19/1 Dams Road, wrongfully restrained P.W.1 and attacked him thereby convicting for offences under Sections 323 and 341 I.P.C.

3.The trial Court, after considering the evidence of P.Ws.1 to 11, Exs.P.1 to P.10, and Ex. D.1, held the accused accused/appellant guilty of offence under Section 3(1)(x) of SC & ST (Prevention of Atrocities) Act and acquitted from other charges under Sections 323 and 341 I.P.C.

4.The learned counsel for the appellant would submit that the impugned judgment of the trial Court is without proper appreciation of evidence. The trial Court failed to appreciate the falsehood in the complaint lodged after a month from the alleged incident. While holding the charges of offences under Sections 323 and 341 I.P.C., not proved the same reasoning applies to the charge under Section 3(1)(x) of SC & ST (Prevention of Atrocities) Act, also. However, the evidence of P.W.3 who belong to the same community of P.W.1 and obviously interested witness, accepted by the trial Court and it failed to consider the evidence of P.W.4, a natural witness, who present during the incident.

5.The learned counsel would submit that, the appellant as the superior officer, reprimanded P.W.1 for not performing well and for his failure to render proper accounts for the money collected, P.W.1 got infuriated and attacked the appellant. To avoid criminal prosecution, P.W.1 has given the false and fabricated compliant belatedly misusing the Special Act meant for protection from abuse and insult and not a weapon to counter defend criminal prosecution.

6.Drawing the attention of the Court to the depositions of P.Ws.1 to 3, who are the witnesses to the occurrence, the learned counsel would submit that the embellishment in the complaint adding allegation attracting the Special Act is highly probable and therefore, the trial Court judgment has to be set aside.

7.Per contra, the learned Government Advocate (crl.side) appearing for the State would submit that there was no delay in

registering the F.I.R. The incident was immediately reported to the higher officials of the company. P.W.4 has enquired the matter on the same day. His assurance and direction of the local police, made P.W.1 to wait. Since, they failed to take action, the complaint was given to the Assistant Commissioner of Police and later, the case was registered on 01.11.2008. As far as the insulting utterance, the evidence of P.W.3 corroborates P.W.1 the other witness present was P.W.4. He also has said about the complaint made by P.W.1 about the alleged utterance. Therefore, the trial Court is right in holding the appellant guilty.

8.The facts admitted and proved in this case is that, P.W.1 joined as Date Entry Operator in the Aashirvad Micro Finance Company (P) Ltd., in the month of January 2006. At that time, the accused was the Branch Manager of the said company having office at Chintadripet. P.W.1 admits that on 24.09.2008, when there was a meeting in the office regarding outstanding, he could not submit his report on time therefore, the accused scolded him.

9.Again on 29.09.2008, at about 4.30 pm, the accused had come to the Seat of P.W.1 and scolded him for not maintaining the accounts properly but sitting leisurely in the chair. Thereafter, tussle between them has occurred. While P.W.1 says that the accused kicked him on his chest, whereas, P.W.2 and P.W.3, Field Development Officers in the said company had said that on 29.09.2008, there was a fight between P.W.1 and the accused. Both exchanged blows. They all intervened and stopped the fight. P.W.1 say that, in the course of the fight, the accused insulted him using his community name. P.W.3 alone corroborates it. The community certificate of P.W.1 - Ex.P.2, submitted by the prosecution proves that P.W.1 belongs to Schedule Caste and Ex.P.4, community certificate of the accused indicates that the accused belongs to non scheduled community.

10.The matter has been taken up to the higher officials of the company on the same day. P.W.1 has reported the matter to P.W.4 at 7.00 pm. When P.W.4 contacted the accused, the accused has informed him that he sustained injury on his head and admitted in the hospital for suture. P.W.4 has categorically stated that when P.W.1 met him on 29.09.2008, he did not complained against the accused about insulting him saying his community name. The only evidence which supports the version of P.W.1 is the deposition of P.W.3. Who also belongs to the same community of P.W.1. Two persons of different communities were present, at the time of occurrence. One had deposed that the accused used community name to insult P.W.1, whereas, the other witness P.W.2 had only spoken about the tussle between them and not about the abuse of using community name. The conduct of P.W.1 soon after the incident which is spoken by P.W.4 also indicates that there was no utterance of community name in order

to insult P.W.1. Coupled with the fact that for an incident which has taken place on 29.09.2008, has been reported to the Commissioner of Police by P.W.1 adding offence under Section 3 (1)(x) of SC & ST (Prevention of Atrocities) Act only on 23.10.2008 and F.I.R., has been registered on 01.11.2008. Though there is some explanation given by the prosecution for the delay, a long delay with exaggeration of the event to attract the Special Act is clearly seen from the evidence.

11.The accused has sustained injury on the date of incident. At 7.00 'O' clock when P.W.4 called the accused, he has informed P.W.4 that he is taking treatment in the hospital for the injury he sustained. Whereas, P.W.1 has gone to the head office after the incident. From the depositions of P.W.3, and P.W.2, we find that both P.W.1 and the accused sustained injury in the fight. From the evidence of P.W.9, a shop owner at Chintadripet Dams Road, it appears that, on the same day, at 5.00 pm, there was a fight between the accused and P.W.1. He and others there intervened and prevented the fight. This evidence has not been corroborated by any other witness, so, the trial Court has disbelieved the version of the prosecution in this aspect.

12.Section 3(1) (x) of SC & ST (Prevention of Atrocities) Act, reads as below:-

"3(1)(x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

13.From the evidence of P.Ws.1 and 3, though they both say the appellant uttered filthy words, insulting P.W.1, this is not corroborated by any other person P.W.3 appears to be an interested witness coupled with the fact that the delay in lodging the case renders the case of the prosecution highly doubtful. It appear that, in order to escape from the criminal prosecution for assaulting the appellant on his head, P.W.1 has invented the theory of abuse and insult by taking advantage of the provision of the Special Act. He has come out with present compliant after 30 days. Since, the case of the prosecution bristles with falsehood, benefit of doubt has to be extended to the appellant.

14.The trial Court has failed to properly appreciate the evidence and unexplained delay in lodging the complaint. The reliability of the interested witnesses viz., P.Ws.3 and 9 not properly tested. Therefore, the trial Court judgment is liable to be set aside.

15.In the result, the Criminal Appeal is allowed. The judgment dated 19.08.2013 in S.C.No.80/2009 on the file of the learned Special Judge at Chennai under the S.C. & S.T (Prevention of Atrocities) Act, cum Principal Sessions Judge, Chennai is set aside. The appellant/accused is set at liberty unless, his presence is required with in connection with any other case. The fine amount, if any, paid shall be refunded to him. The bail bond, if any, executed shall stand cancelled.

Sd/-  
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

jbm

To

- 1.The Special Judge under the S.C. & S.T (Prevention of Atrocities) Act, cum Principal Sessions Judge, Chennai.
  - 2.The Public Prosecutor, High Court, Chennai.
  - 3.The Section Officer, Criminal Section, (Records) High Court, Madras.
  4. The Assistant Commissioner of Police, Egmore Range, Chennai.
  5. The XIV Metropolitan Magistrate Court, Egmore, Chennai.
  6. The Principal Sessions Court, Egmore, Chennai.
  7. The Special Judge, Chennai.
  8. The Superintendent, Central Prison, Puzhal, Chennai.
  9. The Joint Secretary to Government Public (Law & Order)
- +1cc to Mr.C.Sivakumar, Advocate SR.No.5836

Crl.A.No.596 of 2013

PP(CO)  
GMY(09/05/2019)