

BAIL SLIP

The Appellant/Accused viz, Thangadurai, S/o. Ramamurthy and Venkatesan, S/o. Ganesan were directed to be released on bail as per order dated 23/04/2014 in CrI.M.P.No.1 of 2014 in CrI.A.227 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.04.2019

PRONOUNCED ON : 10.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.227 of 2014

1.Thangadurai
2.Venkatesan

...Appellants/Accused 1 & 2.

-Vs-

State by the
Deputy Superintendent of Police,
Vridhachalam Circle,
Cuddalore District
(Crime No.13 of 2013)

Respondent

Prayer:- This Criminal Appeal is filed under Section 374 Cr.P.C., to set aside the judgment of the learned Principal Sessions Judge, Cuddalore Division at Cuddalore in S.C.No.99 of 2013 dated 11.04.2014 and acquit the accused/appellants.

For Appellants : Mr.L.Mahendran

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

JUDGMENT

The appellants herein are the first and second accused in SC No.99/2013 on the file of the learned Principal Session Judge, Cuddalore.

2.Based on the complaint dated 01/02/2013 given by Sekar, the President of M.Patti Village Panchayat, the respondent Police registered FIR against 1) Thangadurai, Clerk of the said Panchayat office and 2) Venkatesan under sections 341, 294(b),

323,355 and 506(i) IPC r/w section 3 (1)(x) of SC and ST (POA) Act, 1989. On the same day, the investigation was taken up by the Deputy Superintendent of Police, Virdhachalam Sub-Division as per the proceedings of the Superintendent of Police, Cuddalore District and filed final report, on completion of the investigation. The trial Court framed charges against Thangadurai (A-1) and Venkatesan (A-2) for offences under sections 341, 294(b), 323,355 and 506(i) IPC r/w section 3 (1)(x) of SC and ST (Prevention Of Attrocities) Act, 1989.

3.Prosecution examined 11 witnesses. 10 exhibits were marked. On behalf of the defence, no witness or exhibits marked.

4.The trial Court held A-1 found guilty of all charges. A-2 found guilty of charge under section 341 IPC alone and not guilty of rest of the charges. The appeal is against the conviction and sentence passed in SC 99/2013.

5.The case of the prosecution is that, the defacto complainant - Sekar (PW-1) is the president of M.Patti village panchayat. He belongs to Scheduled Caste. A-1 working as Clerk in the said panchayat. As per the written complaint dated 01/02/2013 (Ex P-1) given by PW-1, on 31/01/2013 at about 8.45 pm, while he was returning from Periyannayagi Temple, due to previous enmity, A-1 and A-2 restraint him and abused him calling his community name, with intention to insult him. A-1 hit him with slippers on his chest and left forearm. A-2 strangulated his neck. They threatened him that they will throw bomb and destroy his house and family. At that time, his friend - Devaraj (PW-2) came and prevented the accused from causing any further hurt to him.

6.Before the trial Court, PW-1 deposed that, A-1 used to disrespect him while in office. He was not prompt in carrying out his work. The Village Panchayat passed a resolution to transfer A-1 and requested the Block Development Officer to transfer him. Infuriated by that, on the next day, A-1 went to the house of PW-1 picked quarrel with PW-1 questioning the attempt to transfer him. A-1 caught the shirt of PW-1 and threatened him how a person belongs to Adi Dravida community can transfer him that too who belong to 'Padaiyachi' community.

7.On 31/01/2013 morning, P.W.1 went to Panchayat office and returned home at 5.30 pm. At about 7.00 pm, P.W.1 went to Periyannayagi Temple in his village and returning back with Devaraj (PW-2), in his two wheeler, near Rajiv Gandhi statue, A-1 and A-2 blocked their way. A-1 slapped P.W.1 on the left cheek. Removed his slipper and hit him on the chest and left hand. Used vulgar words and insulted him by calling his caste name. Questioned PW-1 'how dare to transfer him' and threatened to destroy him and his family by throwing bomb at his house. A-2 also attacked P.W.1 and scolded him calling his community name.

8. PW-2 - Devaraj, PW-3 - Appasamy, PW-4 - Arumugam and PW-5 - Subramanian are the eye witnesses who have witnessed the incident. The Investigating Officer has collected the community certificates of the respective parties to prove the accused persons belong to non scheduled community and the defacto complainant belong to scheduled caste. The community certificates are marked as Exs. P-3 and P-4. The Officer who issued the certificates was examined as PW-7. The accident report for PW-1 marked as Ex P-2 given by the Doctor - PW-5.

9. The trial Court has relied upon the prosecution witnesses to convict A-1 for wrongful restraint, using obscene language, causing hurt and for insulting a member of SC & ST community in the public. Convicted A-2 for wrongful restraint.

10. The learned counsel for the appellants while pointing out the contradictions and embellishments in the prosecution case would contend that the complaint was given with ulterior motive by the defacto complainant (P.W.1), who tried to misappropriate the Rajiv Gandhi Rural Employment Scheme Funds. As a Clerk, A-1 refused to write false accounts and to assist the defacto complainant (P.W.1) to misappropriate the public funds. Hence, the present false complaint has been foisted against the appellants/A.1 and A.2.

11. The complaint - Ex P-1 and deposition of PW-1 before the trial Court are full of contradictions. The embellished version of PW-1 does not find place in his complaint or corroborated by any other witnesses or documents. The utterance of words insulting him as member of scheduled caste community is not corroborated by any other witness. The presence of PW-2 at the scene of occurrence is doubtful, in view of the evidence of PW-3 who said that, on the fateful day, PW-1 came alone near Rajiv Gandhi statue. Whereas PW-1 had deposed that Devaraj (PW-2) came to the temple along with his wife and after worshiping, he and PW-2 came together. Near Rajiv Gandhi statue when A-1 and A-2 wrongfully restrained him and attacked him using abusive language, PW-2 interfered the fight and stopped A-1 and A-2 attacking further. In contradiction to this version of PW-1, Devaraj PW-2 has not said anything about his visit to the temple along with his wife on that day. He belongs to different village and his presence at the scene of occurrence, not been explained. Further, he has categorically stated that he tried to prevent the assault, but PW-1 told him he should not talk or attack. He should stand as witness only.

12. Pointing out the accident register - Ex P-2 which does not disclose any injuries to PW-1 but only, mentions about the complaint of pain by the patient (P.W.1), the learned counsel for the appellants contended that this document is a self serving document created by PW-1 for the purpose of the case.

The date of alleged occurrence is on 31/01/2013 whereas PW-1 has gone to the hospital on the next day i.e., on 01.02.2013 at 11.45 am and got this Accident Register, after giving complaint to the police at 8.00 am.

13. Per contra, the learned Government Advocate (crl.side) would content that the incident has taken place due to previous enmity. The motive has been proved through the witnesses. Through cross examination, the accused himself has accepted the previous enmity. The occurrence on 31/01/2013 has been witnessed by several witnesses and their testimony proves about the wrongful restraint of P.W.1 and the exchange of words and assault by A-1 using his slipper. The village panchayat President who happened to be member of Scheduled Caste was prevented from discharging his duty by the clerk of the Panchayat due to caste consideration. Therefore, the trial Court has rightly held A.1 and his associate, A.2 guilty.

14. The specific case of P.W.1 against A-1 is that, being the Clerk of the Panchayat, he did not work properly and he has committed mischief in the Office. The panchayat had passed resolution to transfer him from M.Patti Panchayat office. He also wrote to the Block Development Officer about it. A-1 questioned him about this. This allegation and assertion is not in the complaint. No doubt, complaint need not given in the motive or background of the cognizable offence, having said that there was previous enmity between PW-1 and A-1, the Investigating Officer ought to have collected the cause for previous enmity. No document to support the assertion of PW-1 that the panchayat passed resolution to transfer A-1 and he wrote letter to the Block Development Officer to appoint some other Clerk to the panchayat, filed by the prosecution. The new fact introduced for the first time, in the testimony of a witness, which is not in his previous statement, is to be taken as contradiction or embellishment. If the said fact left uncorroborated by the prosecution, such assertion of fact become doubtful and unreliable.

15. On the date of occurrence, PW-1 say that he and PW-2 came together from the temple in a two wheeler. PW-2 evidence does not corroborates this. PW-3 evidence contradicts this by saying PW-1 came alone from the temple. The witnesses PWs-2,3,4 and 5 does not corroborate the evidence of PW-1 that he was insulted by A-1 and A-2 by calling his community name. Except the evidence of PW-1, no other prosecution witness corroborates the allegation of calling the community name of P.W.1 to insult him, so as to attract the provisions of SC and ST (POA) Act.

16.The evidence of the prosecution witnesses are consistent only about the fact that there was some quarrel between the accused and PW-1 near Rajiv Gandhi Statue at about 8.30 pm on 31.01.2013. The attempt of misappropriation of funds of the Panchayat alleged against PW-1 has been suggested to him in the cross examination which he has denied. Whereas, his own brother examined as PW-4 and his friend PW-2 admits that there was dispute between PW-1 and A-1 in respect of the accounting the funds of Panchayat. Therefore, this Court is of the considered view that, the attempt to share the public money or the attempt to prevent misappropriating the public money was the cause for the dispute. No communal hatred or intention to insult is made out in this case. From the evidence, only fact proved is the wrongful restraint of P.W.1 by A-1 and A-2 and nothing else. Therefore, the trial Court finding is liable to be interfered.

17.In the result, the criminal appeal is partly allowed. The conviction and sentence of A-1 and A-2 for offence under section 341 IPC to undergo one month simple imprisonment and to pay a fine of Rs 500/- each is confirmed. The conviction of A-1 for offences under sections 323, 355, 506 (i) IPC and section 3 (1)(x) of SC/ST (POA) Act , 1989 are set aside. Fine amount paid, if any, is ordered to be refunded to A-1. The bail bond stands cancelled. The period of imprisonment, if any, already undergone shall be given set off as provided under section 428 Cr.P.C.

jbm

Sd/-

Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Cuddalore Division,
Cuddalore.

2. The Deputy Superintendent of Police,
Virudhachalam Circle,
Cuddalore District.

3. The Judicial Magistrate,
Virudachalam.

4. The Chief Judicial Magistrate ,
Cuddalore.,

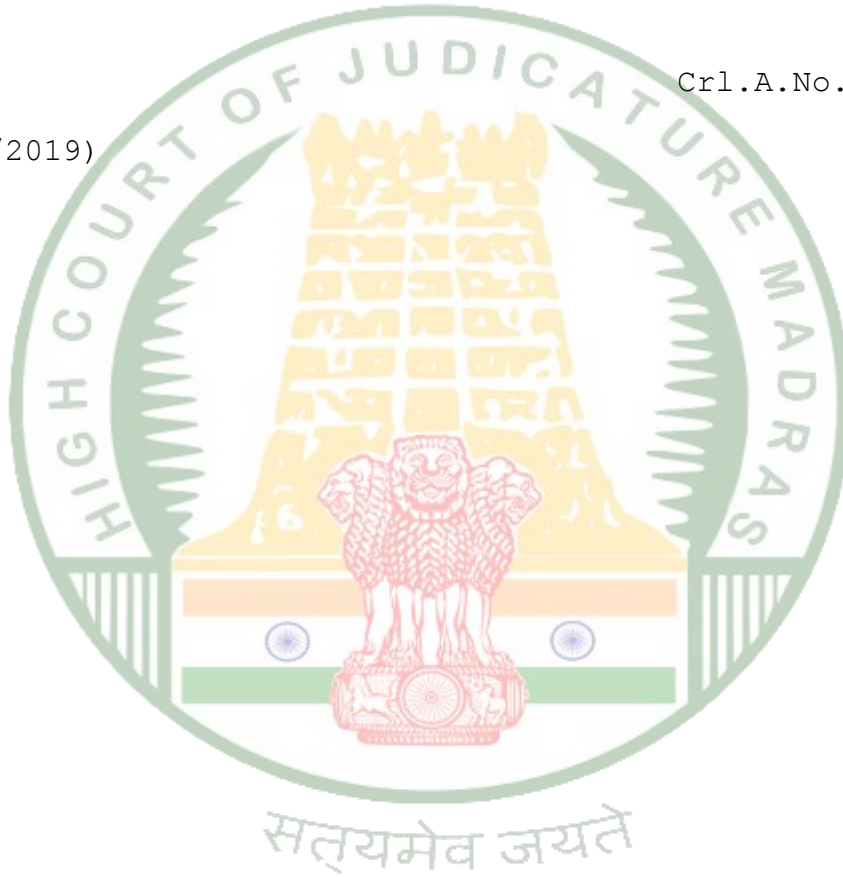
5.The Public Prosecutor,
High Court, Chennai.

6.The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.L. Mahendran Advocate, SR.No.35656

Crl.A.No.227 of 2014

Kak(01/07/2019)



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