



Bail Slip

The Appellants / Accused namely 1) Anthony, aged about 29 years, S/o.Gurusamy Thevar, 2) Bose, aged about 26 years, S/o.Veluchamy, 3) Subburaj, aged about 29 years, S/o.Ponnraj are directed to be released on bail as per order of this Court dated 27.08.2012 and made in MP(MD)No.1 of 2012 in Crl.A(MD)No.186 of 2012 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.186 of 2012

1.Anthony
2.Bose
3.Subburaj

... Appellants

Vs.

State through
The Deputy Superintendent of Police,
Sattur Sub Division in
Vembakottai Police Station.
(Crime No.226 of 2005)

... Respondent

Prayer: Criminal Appeals filed under Section 374 of Cr.P.C, to set aside the order of conviction dated 09.07.2012 in Spl.S.C.No.89 of 2009, on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur and allow this criminal appeal and acquit all the appellants.

For Appellants : Mr.V.Sasikumar

For Respondent : Mrs.S.Bharathi

Government Advocate (Crl. Side)

J U D G M E N T

The appellants were convicted and sentenced vide judgement dated 09.07.2012 in Spl.S.C.No.89 of 2009, on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, as follows:-

Accused	Penal Provisions	Punishment
A1, A2 and A4	341 IPC	To undergo imprisonment for 6 months R.I. with fine of Rs.500/-. In default to undergo 2 months R.I.
	354 r/w 3(1) (10) SC/ST POA Act	To undergo imprisonment for 6 months R.I. with fine of Rs.500/-. In default to undergo 2 months R.I.
	3(1) (14) of POA Act	To undergo imprisonment for 6 months R.I. with fine of Rs.500/-. In default to undergo 2 months R.I.



2.The prosecution case is that when P.W.1/Gurulakshmi was returning to her village Achankumlam via., Eravarpatti on 14.09.2005, the accused, who were six in number had unlawfully assembled themselves and waylaid P.W.1/Gurulakshmi. They had pulled her saree and outraged her modesty. At that time, the husband of P.W.1 arrived on the spot and he was also assaulted. Both were abused by referring to their community. In this regard, P.W.1/Gurulakshmi lodged complaint before Vembakottai Police Station. Crime No.226 of 2005 came to be registered. Since the offences were under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the Deputy Superintendent of Police, Sattur Sub Division, took over the investigation. He filed final report against all the six accused before the learned Judicial Magistrate No.II, Sattur. Cognizance of the offences was taken under Sections 147, 341, 354 and 323 r/w. 3(1)(x), 3(1)(xi) and 3(1)(xiv) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989. The case was committed to Sessions Court in P.R.C.No.25 of 2005. The case was taken up for trial in Spl.S.C.No.89 of 2009, on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur. Charges were framed against the accused under the aforesaid provisions and the accused pleaded not guilty and claimed to be tried.

3.The prosecution examined as many as eight witnesses and marked Exs.1 to 7. M.O.1 and M.O.2 were also marked. On the side of the accused no evidence was adduced.

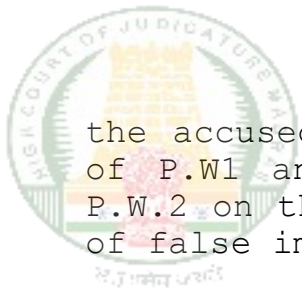
4.The learned Trial Judge after a detailed consideration of the evidence on record by the impugned judgment dated 09.07.2012 convicted A1, A2 and A4 and sentenced them as mentioned above. The other accused were acquitted. Challenging the same, this criminal appeal has been filed.

5.Heard the learned counsel appearing for the appellants and the learned Government Advocate (Crl. Side) appearing for the respondent.

6.The learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference and she wanted this Court to dismiss the appeal.

7.I carefully considered the rival contentions and perused the evidence on record.

8.The impugned judgment rests entirely on the testimony of P.W.1 and P.W.2. According to P.W.1/Gurulakshmi, there was a motive between the accused and her husband. In view the same, she was waylaid and her modesty was outraged by the accused. According to P.W.1, when the occurrence took place, P.W.3/Karunakaran and P.W.4/Anthony came to the spot and not only separated the two but they also accompanied P.W.1 to the police station to lodge the complaint. But unfortunately for the prosecution, both P.W.3 and P.W.4 turned hostile. That leaves us only with the testimony of P.W.1 and P.W.2. P.W.2 is none other than the husband of P.W.1. P.W.2/Charles would state that he used to consume liquor. The motive attributed by the prosecution is that P.W.2 was preventing



the accused from carrying out the well digging work in the village of P.W1 and P.W.2. In view of the pre-existing dispute between P.W.2 on the one hand and the accused on the other, the possibility of false implication cannot be ruled out.

8.P.W.1 had stated that occurrence took place on 14.09.2005 at about 06.00 p.m. but Ex.P.1/complaint was lodged only on the next day i.e., 15.09.2005. Ex.P.6/FIR as well as Ex.P.1/complaint reached the Judicial Magistrate only on 19.09.2005.

9.P.W.1 is quite firm in her statement that she went to the police station on the very same day and lodged the complaint. P.W.1 does not say in her evidence that she went to Vembakottai Police Station on the next day also that is 15.09.2005. But then in Ex.P.1/complaint, the date of complaint is mentioned only as 15.09.2005. There is an alteration as far as the date is concerned.

10.In view of the above, namely., (i) motive between P.W.2/Charles and the accused, (ii) P.W.3 and P.W.4 so called eye witnesses turning hostile and (iii) the discrepancies being there between the testimony of P.W.1 and P.W.2 with regard to lodging of the complaint, the alteration in the complaint date, the gross delay in the complaint as well as FIR reaching the Court, I am of the view that it would not be safe to convict the appellants on the testimony of P.W.1 and P.W.2 alone. More than anything else, the testimony of P.W.1 and P.W.2 does not inspire my confidence. P.W.1 was working in a fireworks factory. She was returning to her village at about 06.00 p.m. Even according to P.W.1, a number of co-workers in her factory were hailing from the village of Eravarpatti. The accused were standing in front of a grocery shop in Eravarpatti. It is not possible that a group of six persons will pull the saree of woman in a public place and more so, when they do not have any motive against P.W.1 as such. The testimony of P.W.1 does not inspire my confidence. The version projected by her is inherently improbable. Therefore, I am of the view that the Court below erred in convicting the appellants. In this view of the matter, the impugned judgment is set aside insofar as the conviction and sentence of the appellants, the appellants are acquitted and the criminal appeal stands allowed. The fine amount, if any paid by them shall be refunded forthwith. The bail bond, if any, executed by them shall stand cancelled.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



To:

1.The Principal Sessions Judge,
Srivilliputhur,
Virudhunagar District.

2.The Judicial Magistrate No.II, Sattur.

3.The Deputy Superintendent of Police,
Sattur Sub Division in
Vembakottai Police Station,
Virudhunagar District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to: The Section Officer,
Criminal Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-80441[F] dated 07/08/2019)

Crl.A. (MD) No.186 of 2012

07.08.2019

SMA/25/02/2020/4P/8C