

Bail Slip

Mr.B.Suriyaraj, S/o.Boominathan Thevar, age about 28/2011, Accused No.1 and Mr.Bakkiyaraj S/o.Jeevananthan Thevar, age about 27/2011, accused No.2 was released on bail vide order of this Court in dated 14.06.2011 in MP(MD)No.1 of 2011 in Cr1.A.(MD)No.145 of 2011

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCr1.A.(MD)No.145 of 2011

1. B.Suriyaraj
2. Bakkiyaraj

... Petitioners/Appellants/
Accused Nos.1 and 2

Vs.

State rep. by,
The Deputy Superintendent of Police,
Pattukottai Sub Division,
Thanjavur District.

... Respondent/Respondent/
Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records pertaining to Spl.S.C.No.70 of 2010 on the file of the learned I Additional Sessions Judge(PCR), Thanjavur, set aside the conviction and sentence imposed on the appellants by Judgment dated 04.05.2011 and acquit the appellants.

For Appellants : Mr.A.Arun Prasad

For Respondent : M/s.A.Robinson,
Government Advocate (Cr1. Side).

JUDGMENT

The appellants were convicted for the offence under Sections 506(ii) of I.P.C. and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes(Prevention of Atrocities) Act 1989 and sentenced to undergo 1 year Rigorous Imprisonment for each offence vide Judgment dated 04.05.2011 in S.S.C. No.70 of 2010 on the file of the learned I Additional Sessions Judge(PCR), Thanjavur. They were also levied with a fine of Rs.5,000/-. Questioning the said Judgment dated 04.05.2011, this Criminal Appeal has been filed.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The prosecution case is that the appellants who belong



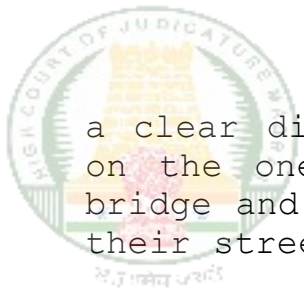
to Agamudaiyan community abused one Muthukrishnan, Suresh and Tamilselvan on 15.01.2010 at about 03.30 p.m., by referring to their community and also criminally intimidated them by brandishing with Aruval. Muthukrishnan thereupon lodged Ex.P.1 complaint before Madhukur police station. Ex.P.6 First Information Report in Crime No.34 of 2010 was registered for the offence under Sections 294(b) and 506(ii) of I.P.C., and Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. P.W.9 Narayanasamy, Deputy Superintendent of Police, Pattukottai, was appointed as the investigation officer under Rule 7(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules 1995. He took up further investigation and after carrying out the usual formalities filed final report against the appellants herein before the learned Judicial Magistrate, Pattukottai. It was committed to the Sessions Court vide P.R.C.No.32 of 2010. The case was taken up for trial in S.C.No.70 of 2010 by the learned I Additional Sessions Judge (PCR), Thanjavur. Charges under Section 3 (1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Section 506(ii) of I.P.C. were framed against the appellants. They pleaded not guilty and claimed to be tried. The prosecution examined 9 witnesses and marked Ex.P.1 to Ex.P.8. On the side of the accused, no evidence was adduced. The learned trial Judge by Judgment dated 04.05.2011, convicted and sentenced the appellants as mentioned above. Challenging the same, this appeal has been filed.

3. Heard the learned counsel on either side.

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

5. The prosecution case is that the occurrence took place on 15.01.2010 at about 03.30 p.m. But then, the First Information Report came to be registered only on 20.01.2010 at about 10.30 a.m. There is a gap of more than four days between the occurrence and the registration of the First Information Report. Of course P.W.1 would claim that he lodged a complaint on the same day and that C.S.R. was issued by P.W.7 Head Constable. P.W.7 would admit in the cross examination that it was not alleged that the accused insulted the defacto complainant by referring to his community or that he came with Aruval. From this admission made by P.W.7 who issued C.S.R., one can come to the conclusion that the earliest complaint was suppressed. In fact the suggestion was put to P.W.7 and of course it was denied.

6. The learned counsel appearing for the appellants would point out that P.W.1 would claim that the occurrence had taken place on 15.01.2010 at about 03.30 p.m. P.W.1 to P.W.3 were sitting at the parapet of the bridge. But then, in the course of examination, he would state that the occurrence took place within their street. Thus there is



a clear discrepancy as to where the occurrence took place. While on the one hand, they would claim that it took place near the bridge and on the other they would state that it took place inside their street.

7. It has also been elicited during the cross examination of P.W.1 that his brother Rajesh was implicated in some criminal cases and that he was also arrested along with others. Therefore, this Court cannot rule out the possibility of false implication out of revenge motive.

8. Admittedly, P.W.1 to P.W.3 did not suffer any injury. It is relevant to note here that all the eyewitnesses, namely P.W.1 to P.W.5 belong to the same community. In the complaint, it is stated that the accused abused P.W.1 to P.W.3 by addressing generally by referring to their community. Therefore it is necessary to look for some corroborative evidence. Apart from P.W.1 to P.W.3, the prosecution has produced two other witnesses, namely, P.W.4 and P.W.5.

9. A reading of their testimony indicates that they are only chance witnesses. According to the prosecution, the occurrence had taken place in a public place, namely, they should have examined some other independent witnesses. According to the prosecution, the appellants were armed with Aruval. They had also chased P.W.1 to P.W.3. If such chasing had taken place, it will definitely be witnessed by the public in general. But no such witness has been examined by the prosecution.

10. I am of the view that there was already simmering tension in the village and that therefore, this false case has been filed against the appellants. The learned trial Judge did not take note of these aspects as mentioned above.

11. The impugned Judgment of the Court below stands set aside. The Criminal Appeal stands allowed, accordingly. The appellants are acquitted of the offence under Section 506(ii) of I.P.C. and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989. The bail bond, if any, executed by them shall stand cancelled and fine amount, if any, paid by them, is to be repaid to them. No costs.

Sd/-

Assistant Registrar ()

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To:

1. I Additional Sessions Judge (PCR),
Thanjavur.
2. Do Through The Principal Sessions Judge,
Thanjavur District
3. The Judicial Magistrate No. I
Thanjavur
4. Do Through The Chief Judicial Magistrate
Thanjavur District
5. The Deputy Superintendent of Police,
Pattukottai Sub Division,
Thanjavur District.
6. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai
7. The Section Officer, -2 copies
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

pmu

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24.07.2019

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