



Bail Slip

Petitioner/Appellant/Accused namely, Syed Diwan, and Nawsath Hussain was released on bail as per order of this Court dated 04.01.2011 made in MP(MD)No.1/2011 in Crl.A(MD)No.04 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.4 of 2011

1.Syed Diwan

2.Nawsath Hussain

... Appellants

Vs

State represented by
The Deputy Superintendent of Police,
Periyakulam Taluk,
Theni, Theni District.
In Cr.No.14 of 2008,

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records from the lower Court and set aside the Judgment of the Lower Court passed by the learned Principal District and Sessions Judge, Theni, Theni District in Spl.S.C.No.58 of 2008, dated 07.12.2010 by allowing this appeal.

For Appellants : Mr.P.Ganapathi Subramanian

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellants were convicted and sentenced vide Judgment dated 07.12.2010 in Spl.S.C.No.58 of 2008 on the file of the Principal District and Sessions Judge, Theni, as follows:-

Accused	Penal Provision	Punishment
A1 and A2	342 of IPC	To pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment
A1 and A2	323 of IPC (two counts)	To pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment.



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A1 and A2	3(1)(iii) of the SC/ST Act	To undergo six months rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo one month simple imprisonment.
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2.The case of the prosecution is that on 28.01.2008, the students of D.Bodinayyakkanpatti Government High School were returning home after the school hours. P.W.1-Nagalingam went to answer the call of nature. He thereafter entered the field of A1 to wash himself. At that time, the appellants caught hold of Nagalingam and Rikky Kevin and wrongfully confined them. They were dragged to the field and tied to a coconut tree. Their dresses were removed. They were also beaten up. The victims were also accused of habitual stealing of vegetables and fruits from the field of the appellants. The victims were abused by referring to their community. When the mother of Nagalingam namely Panchavarnam confronted the appellants, the appellants also abused Panchavarnam by referring to her community. In this regard, Nagalingam submitted Ex.P1 complaint before the Jeyamangalam Police Station. Based on the same, Ex.P11-FIR in Crime No.14 of 2008 was registered for the offences under Sections 294(b), 323, 355 and 342 of IPC r/w 3(1)(X) of the SC/ST (POA) Act, 1989. Since the case involved commission of offence under SC/ST Act, it was investigated by the Deputy Superintendent of Police, Periyakulam Taluk. He examined all the relevant witnesses and filed final report before the Judicial Magistrate, Periyakulam. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.14 of 2008. The case was taken up for trial by the learned Principal District and Sessions Judge, Theni in Special S.C.No.58 of 2008. Against the appellants, charges were framed under Sections 342, 323 and 294 (b) of IPC and Sections 3(1)(iii) and 3(1)(X) of the SC/ST (POA) Act, 1989. The appellants pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Ex.P1 to Ex.P13. M.O.1 to M.O6 were marked. On the side of the accused, no evidence was adduced. The learned trial Judge, by the impugned Judgment, acquitted the appellants in respect of the offences under Sections 294(b) of IPC and Section 3(1)(X) of the SC/ST (POA) Act. However, the appellants were found guilty in respect of the offences under Sections 342 and 323 of IPC and Section 3(1)(iii) of SC/ST(POA) Act, 1989 and were sentenced as mentioned above. Questioning the same, this appeal has been filed.

3.Heard the learned counsel on either side and perused the evidence on record.

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4.The learned counsel appearing for the appellants submitted that in as much as, the case was not investigated by an officer appointed under Rule 7 of the SC/ST (POA) Rules, 1995. The entire proceedings stand vitiated. Rule 7(1) of the SC/ST (POA) Rules, 1995 mandates that an offence committed under the SC/ST Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. He should have been appointed after taking into account of his past experience, sense of ability and justice, to perceive the implication of the case and investigate it along right lines within the shortest possible time. In the case on hand, no doubt, the investigation was done by the Deputy Superintendent of Police. But the question is whether, he was appointed under Rule 7 for conducting the investigation in this case. This Court called upon the learned counsel appearing for the appellant as to whether, the Investigating Officer, who was examined as P.W.15, was specifically challenged or questioned in this regard. It is seen that no such question was put to P.W.15. The appellant's counsel contends that the prosecution was obliged to mark the order issued under Rule 7, specially appointing P.W.15 as the Investigating Officer. The appellant's counsel would contend that in the absence of marking the appointment order, the prosecution should be held to be vitiated.

5.The learned counsel appearing for the appellants placed reliance on the decision reported in **2016 (4) MLJ Criminal Page 509 (Muruganatham Vs. State)**. Para 14, 25, 26 and 27 are as follows:-

"14.The learned counsel for the appellants also contended that prosecution under SC/ST (PA) Act is vitiated because the mandatory provisions of Rule 7 framed under the said Act, has been flouted. As per Rule 7 of the said Act, a D.S.P. as defined in the said Rule alone can investigate the case. However, in this case, there was no specific order empowering either Gopalasamy, D.S.P. or P.W.13 to investigate this case has been issued by the Superintendent of Police, Coimbatore Rural. Further, as per the said Rule, the Investigation Officer has to complete the investigation within 30 days of registration of the case. But in this case, investigation has been completed with a delay of 95 days.

25.In the instant case initially, the case was investigated by Gopalswamy, D.S.P., Pollachi Sub Division. There is no written order as required under the said Rules has been placed before the Court. After him, P.W.13 Rajangam, D.S.P., Pollachi Sub-Division investigated the case. No written order has been passed by the Superintendent of Police, Coimbatore Rural empowering him to investigate the case as



required under the said Rule 7. In his evidence, he did not say that he was so empowered.

26.As per Rule 7(2) of the said Act, the investigation of a case registered under SC/ST (PA) Act must be completed within 30 days from the date of registration of the case. In this case, P.W.12, S.I. Of Police registered this case in Cr.No.208 of 2005 under Section 3(1)(X) of SC/ST Act. He completed the investigation only on 31.08.2005. Thus, he took nearly 90 days to complete the investigation.

27.Thus, in view of the violation of Rule 7 framed under the Act, this prosecution is vitiated."

6.I have to respectfully agree with the proposition laid down in the said decision that if the investigation was done by an officer who was not an officer entitled under Rule 7 of the SC/ST Rules, the prosecution is certainly vitiated. But then, in the case on hand, no question on this aspect was put to the Investigating Officer in this regard. One of the illustrations provided under Section 114 of the Indian Evidence Act, 1872, is that the Court may presume that the judicial and official acts have been regularly performed. Of-course, this is only a rebuttable presumption. Unless, the appellants had challenged the Investigating Officer that he was not specially empowered in this regard, the Court cannot infer that he is not authorised to conduct the investigation under the SC/ST Act. Therefore, I do not accept the aforesaid submission of the learned counsel appearing for the appellant.

7.The prosecution examined three students namely Nagalingam, Rikky Kevin and Perumal Swamy. Nagalingam and Rikky Kevin are the victims. Of-course, as rightly pointed out by the appellant's counsel, P.W.2-Rikky Kevin belongs to Christianity and therefore, the offence committed on P.W.2 may not attract under SC/ST Act, 1989. But then, P.W.1-Nagalingam undoubtedly belongs to paraiyar community which is a notified scheduled caste. The appellants obviously are non-SCs as they profess Islamic religion. P.W.1, in his chief examination, had stated that on the occurrence day, he opened the gate of the appellant's garden and went inside for washing himself. He stated that he and P.W.2-Rikky Kevin were dragged by the appellants into their field. They were stripped naked and tied to coconut tree. They were accused of indulging in habitual theft from the field of the appellants. P.W.1's brother- Perumalswamy ran and reported the matter to the mother of P.W.1. Thereafter, the victims were taken to the local Pallivasal. On 29.01.2008, the complaint was lodged before the Jeyamangalam Police Station. P.W.1 had stated that it was his uncle who drafted the complaint and that he signed in the said



complaint. P.W.1 was an in-patient in the Government College Hospital for about seven days. During the relevant time, Nagalingam was studying in 10th standard. Nagalingam was cross examined at great length. He could not be shaken in the cross examination. P.W.2-Rikky Kelvin who was also given the same treatment as P.W.1, had also corroborated the testimony of P.W.1. P.W.3-Perumalswamy, was studying in 6th standard during the relevant time. He had also corroborated the testimony of P.W.1 and P.W.2. P.W.4 is the mother of P.W.1 and P.W.3. When P.W.3 reported the matter to her, she came to rescue her son. She had also supported the case of the prosecution. P.W.5 is the father of P.W.1 and P.W.3. He had also deposed that the appellants paraded P.W.1 and P.W.2 naked on the public road. P.W.6 is the mother of P.W.2. But she is not having any personal knowledge about the occurrence. P.W.7 is the uncle of P.W.2 and it was he who drafted Ex.P1 complaint. P.W.8 attested the observation mahazar. P.W.9 was working in the Periyakulam Government Hospital and he treated P.W.1-Nagalingam, on 29.01.2008, when he was admitted to the hospital. Ex.P3 is the wound certificate issued by him. He had deposed that the injuries suffered by P.W.1 were simple in nature. P.W.10 issued Ex.P6 community certificate for the accused. P.W.11 issued Ex.P8 community certificate in respect of P.W.2 certifying that he belongs to backward community being a Christian. P.W.12 issued Ex.P9 community certificate certifying that P.W.1 belongs to Hindu Paraiyar Community. P.W.13 is the Jamath Office Bearer and he turned hostile. P.W.14 was the Sub Inspector of Police, Jeyamangalam Police Station and it was he who registered the FIR. P.W.15-Deputy Superintendent of Police who conducted the investigation and filed final report.

8.From a reading of the testimony of P.W.1 to P.W.5, one can come to the safe conclusion that from the field of the appellants, usufructs were getting stolen and that on the occurrence day, when P.W.1 entered their garden, the appellants abruptly concluded that P.W.1 and P.W.2 have been habitually stealing the vegetables and fruits and other usufructs from their field. Of-course, the appellants did not have any intention to cause injury to the victims on the ground that they belong to the scheduled caste community. That is why, the Court below rightly acquitted the appellants for the offences under Sections 3(1)(X) of the SC/ST Act as well as 294(b) of IPC. But then, Section 3(1)(iii) of the SC/ST Act, 1989, penalise the action of forcible removal of clothes from the person of a member of a Scheduled Caste or parading him naked. Admittedly, the appellants are not the members of the Scheduled Caste. P.W.1 is a member of the scheduled caste.

9.A careful reading of the testimony of the prosecution witnesses, particularly, P.W.1 to P.W.5 clearly establishes that



clothes of P.W.1 and P.W.2 were forcibly removed and they were tied naked to a coconut tree and thereafter, paraded naked and taken to the local pallivasal. These facts are totally derogatory to human dignity. The prosecution had established its case beyond reasonable doubt in respect of the offences under Sections 323 and 342 of IPC and Section 3(1)(iii) of the SC/ST Act, 1989. I find no ground to interfere. The appeal stands dismissed. However, the appellant's counsel submitted that after this occurrence, the first appellant had lost vision in both eyes. The second appellant is also having some disability. In fact, medical certificates were produced in this regard. Therefore, the sentence of rigorous imprisonment is modified to one of simple imprisonment. The Jail Authorities will take into account the medical condition of both the appellants and extend them appropriate treatment.

10. With these observations, this criminal appeal is dismissed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar (CS)

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To

1. The Deputy Superintendent of Police,
Periyakulam Taluk,
Theni, Theni District.

2. The Principal District and Sessions Judge,
Theni, Theni District.

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

+1 CC to Mr.P.GANAPATHI SUBRAMANIAN, Advocate (SR-80795[F] dated 08/08/2019)

Crl.A(MD)No.04 of 2011
07.08.2019

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