

**BAIL SLIP**

The Appellant herein/Accused viz., namely Kalimuthu, S/o. Kaliappan Nadar, was released on bail as per order of this court dated 22.02.2011 made in MP(MD)No.1 of 2011 in CrI.A.(MD)No.46 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrI. A.(MD)No.46 of 2011

Kalimuthu

.. Appellant/Single Accused

Vs.

State rep. by,
The Deputy Superintendent of Police,
Srivilliputhur Town Police Station,
Virudhunagar District,
(Crime No.33 of 2007)

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the conviction and sentence imposed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in Special S.C.No.75 of 2009 dated 29.01.2011 and allow this Criminal Appeal.

For Appellant : Mr.G.Marimuthu
For Respondent : Mr.A.Robinson,
Government Advocate(CrI. Side).

JUDGMENT

The appellant was tried in Spl.S.C.No.75 of 2009 on the file of the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur and convicted and sentenced vide Judgment dated 29.01.2011 as follows:-

Accused	Charges u/s.	Sentence
Sole Accused	354 of I.P.C.	6 months S.I.
	3(1)(x) of the SC/ST (P.O.A.) Act 1989.	6 months S.I., Rs.1,000/- fine or two months S.I.

Aggrieved by the same, this appeal has been filed.

2. Heard the learned counsel on either side.

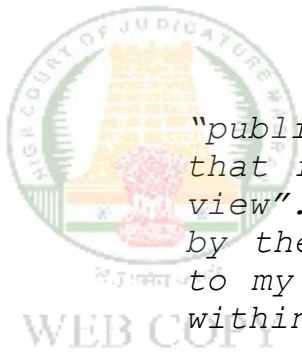


3. The prosecution case against the appellant is that on 16.01.2007 at about 9.00 p.m., the victim and her husband Muthupandi were returning home, after attending some function. The husband of the victim wanted to attend nature's call and had gone a little distance away. The victim was standing alone at a remote spot in the village. At that time, the appellant accompanied by some of his friends had come there. Seeing the victim standing alone, he appears to have uttered some insulting words and also attempted to outrage her modesty. In this regard, the victim lodged Ex.P.1 complaint before Srivilliputhur Town police station. Crime No.33 of 2007 Ex.P.6 was also registered. Since the victim had lodged the complaint that she was also insulted by referring to her community, the offences under Section 354 of I.P.C. and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 were also registered. The Deputy Superintendent of Police took up the investigation and filed final report before the learned Judicial Magistrate, Srivilliputhur. On being committed, charges were framed against the appellant. The appellant denied the charges and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.8. The learned trial Judge found the accused guilty under both the provisions and sentenced him as mentioned above.

4. Even though the main witnesses examined in support of the prosecution are P.W.1 to P.W.4 and P.W.11, it is seen that P.W.2 to P.W.4 turned hostile. Therefore the entire case of the prosecution has to necessarily rest only on the testimony of P.W.1 and P.W.11. P.W.11 is none other than the husband of the victim. Therefore, to bring home the charge under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the utterance of insulting words by referring the S.C. community must have been done within the public view. In this case, though the occurrence had taken place in a public place, one cannot come to conclusion that it was committed in public view. Therefore, the learned trial Judge erred in passing the impugned Judgment. The expression of "public view" had been interpreted in a decision of this Court in CrI.A.No.474 of 2009, dated 18.11.2016, which reads as follows:

32. In Victor Paul and another vs. State (2002) MLJ (CrI) 202) with regard to the phraseology "public view" employed in Section 3(1) of SC/ST Act, a learned Judge of this Court observed as under:

"4. the word " public view" is not defined in the Act. The dictionary meaning of the word "public" is "open to the people as whole", the dictionary meaning of the word " view" is vision or sight as from a particular position. Reading these two meanings together in the context of the words' public view" , it only means that the public should have viewed the incident irrespective of the place where the offence is committed. The offence may be in a public place with " public view" or in any other place within



"public view". In either situation, the essential element that requires to be established is that it was in "public view". The work " public view" in the Section is preceded by the word " in any place within". Therefore, it is clear to my mind that insult or intimation should be in a place within public view".

35. In *E. Krishnan Nayanar vs. M. A. Kuttappan* (1997 CrL LJ 2036) it was held as under:

"18. As stated by me earlier the words used in Sub Sec (x) are not " in public place, but within the public view which means the public must view the person being insulted for which he must be presented and no offence on the allegations under the said Section gets attracted"

37. In *Victor Paul (Supra)*, the learned Single Judge of this Court took the view that for the purpose of the phraseology "public view" employed in Section 3(1)(x) of SC/ST Act, public must present and view the occurrence.

38. The expression "public view" employed in Section 3(1)(x) of the SC/ST Act, came for consideration in a case before a Division Bench of the Delhi High Court. In the said case, the defacto complainant is a member of Scheduled Caste. He was staying in a flat along with his family. The accused were residing in the same flats. They were alleged to have called the defacto complainant and his wife by their caste. It was contended that the occurrence did not take place in public view as no public person was present. Justice V. S. Agarwal (as His Lordship then was) took the view that for the purpose of "public view" employed in Section 3(1)(x) of SC/ST Act, it is not necessary that a huge crowd must present, it is enough two or more members of the public were present, heard and viewed, as four persons residing in the same flats viewed the occurrence, the occurrence had taken place in public view.

39. However, Justice B. A. Khan (as His Lordship then was) took the view that the persons who were present and viewed must be independent persons, it will not include his friends, Associates, neighbours and thus the residents of the same flats will not be independent persons, so the occurrence had not taken place in ' public view'.

40. The said tangle was referred to a third Judge, namely, Hon'ble Justice S. K. Agarwal (Daya Bhatnagar Vs. State of Delhi (2004 (109 DLT 915))

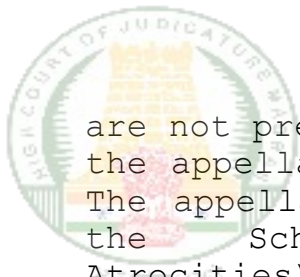
41. Hon'ble Justice S. K. Agarwal endorsed the view of Hon'ble Justice B. A. Khan and observed as under:



19. The SC/ST Act was enacted with a laudable object to protect vulnerable section of the society. Sub-clauses (I) to (xv) of Section 3(1) of the Act enumerate various kinds of atrocities that might be perpetrated against scheduled castes and scheduled tribes, which constitute an offence. However, sub-clause (x) is the only clause where even offending "utterances" have been made punishable. The Legislature required 'intention' as an essential ingredient for the offence of 'Insult', "intimidation" and 'humiliation' of a member of the Scheduled Casts or Scheduled Tribe in any place within "public view". Offences under the Act are quite grave and provide stringent punishments. Graver is the offence, stronger should be the proof. The interpretation which suppresses or evades the mischief and advances the object of the Act has to be adopted. Keeping this in view, looking to the aims and objects of the Act, the expression "public view" in Section 3(i)(x) of the Act has to be interpreted to mean that the public persons present, (howsoever small number it may be) should be independent and impartial and not interested in any of the parties. In other words, persons having any kind of close relationship or association with the complainant, would necessarily get excluded. I am again in agreement with the interpretation put on the expression 'public view' by learned brother Mr. Justice B.A. Khan. The relevant portion of his judgment reads as under:

"I accordingly hold that expression within 'public view' occurring in Section 3(i)(x) of the Act means within the view which includes hearing, knowledge or accessibility also, or a group of people of the place/locality/village as distinct from few who are not private and are as good as strangers and not linked with the complainant through any close relationship or any business, commercial or any other vested interest and who are not participating members with him in any way. If such group of people compromise any one of these, it would not satisfy the requirement of 'public view' within the meaning of the expression used"

42. Thus from the language used in Section 3(1)(x) of the Act and the above survey of case-laws, it is very clear that for an offence under Section 3(1) 3(x) of SC & ST Act, at the time of occurrence, some independent members of the public should hear and view the utterances made by the accused towards a member of the scheduled Caste / Scheduled Tribe Community."



are not present in this case, the conviction and sentence imposed on the appellant for the aforesaid offences is liable to be set aside. The appellant is acquitted of the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

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6. I am however convinced that the prosecution had established its case against the appellant in respect of the charge under Section 354 of I.P.C. beyond reasonable doubt. The testimony of P.W.1 inspires the confidence of this Court. In fact the appellant's counsel at this stage submitted that having regard to evidence on record, he would not challenge the conviction of the appellant for the offence under Section 354 of I.P.C. He however submitted that the appellant was in prison for about two months. Therefore, the sentence of imprisonment imposed on the appellant is reduced from six months Simple Imprisonment to the period already undergone. The appellant has come forward to deposit a sum of Rs.5,000/- as compensation. The appellant is therefore directed to deposit a sum of Rs.5,000/- (Rupees Five Thousand only) towards compensation to the credit of Spl.S.C.No.75 of 2009 on the file of the Principal Sessions Court, Virudhunagar District at Srivilliputhur, within a period of six weeks from the date of receipt of a copy of this order. Upon such deposit made by the appellant, the same shall be disbursed to the victim. The appellant shall also file an affidavit of apology expressing his sincere regret and remorse over his misbehaviour and utterance towards the victim. Thereupon, the learned trial Judge shall also hand over the copy of the affidavit of apology executed by the appellant to the victim.

7. The Criminal appeal stands partly allowed. The bail bond, if any, executed by him shall stand cancelled. No costs.

Sd/-

Assistant Registrar (CRL SIDE)

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Sub Assistant Registrar(CS)

pmu

To

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

2. The Deputy Superintendent of Police,
<https://hcservices.ecourts.gov.in/hcservices/>
Srivilliputhur Town Police Station,
Virudhunagar District.



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

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

+1 CC to M/s.G.M.LAW OFFICE, Advocate (SR-76515[F]dated
22/07/2019)

Cr1. A.(MD)No.46 of 2011
19.07.2019

VB(21.05.2020) 6P 6C