

**BAIL SLIP**

The Appellant/Accused viz., 1.Sundaramoorthi, S/o.Saminathan, 2.Prabu @ Prabakaran, S/o. Jeyabal was released on bail (Accused not in Jail) granted Hon'ble this court dated 18/06/2013 made in MP (MD)No.1 of 2013 in CrI A(MD)172 of 2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A.(MD)No.172 of 2013

1. Sundaramoorthi

2. Prabu @ Prabakaran

... Appellants/Accused Nos. 1 & 2

Vs.

State rep. by,
The Inspector of Police,
Papanasam Police Station,
Thanjavur District.
(Crime No.211 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the Judgment and conviction granted against the accused by the Additional District Judge/PCR Judge, Thanjavur, in SSC 32 of 2011, dated 14.05.2013 and acquit the appellants of all the charges.

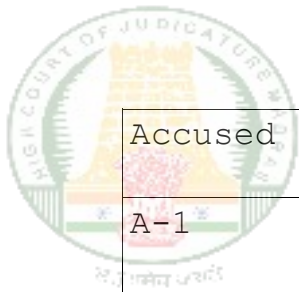
For Appellants : Mr.Mohanasundaram

For Respondent : M/s.S.Bharathi,
Government Advocate (CrI. Side).

* * *

JUDGMENT

The appellants were convicted and sentenced by Judgment dated 14.05.2013 in S.S.C.No.32 of 2011 on the file of the learned I Additional Sessions Judge(PCR), Thanjavur, as follows:-



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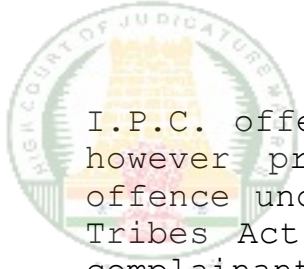
Accused	Penal Provisions u/s.	Punishment
A-1	325 of IPC	To undergo imprisonment for 3 years R.I. with fine of Rs.1,000/-. In default, to undergo imprisonment for 3 months S.I.
	3(1)(x) of SC/ST (POA) Act	To undergo imprisonment for 6 months R.I. with fine of Rs.1,000/-. In default, to undergo imprisonment for 1 month S.I.
A-2	323 of IPC	To undergo imprisonment for 6 months R.I.
	3(1)(x) of SC/ST (POA) Act	To undergo imprisonment for 6 months R.I. with fine of Rs.1,000/-. In default, to undergo imprisonment for 1 month S.I.

2. The prosecution case is that on 16.10.2010 at about 6.00 p.m., in Andakudi main road, the appellants herein abused P.W.2 Lakshmanan by referring to his community and also assaulted him. In this regard, the wife of the victim, namely, Rajakumari lodged Ex.P.1 complaint before Papanasam police station, leading to registration of Ex.P.8 First Information Report in Crime No.211 of 2010 for the offences under Sections 294(b), 323 and 307 of I.P.C. r/w Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes Act 1989.

3. The case was investigated by the Assistant Superintendent of Police/P.W.15. He filed final report before the Judicial Magistrate, Papanasam, for the offences under Section 294(b), 323 and 307 of I.P.C. r/w Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes Act 1989. The case was committed to the Special Court in S.S.C.No.32 of 2011. Charges were framed against the appellants for all the aforesaid offences. An additional charge under Section 325 of I.P.C. was framed against the accused. The appellants denied the charges and claimed to be tried.

4. The prosecution examined as many as 15 witnesses and marked Ex.P.1 to Ex.P.11. M.O.1 and M.O.2 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge after a detailed consideration of the evidence of record and after acquitting the first appellant of the offence under Sections 325 of I.P.C. convicted and sentenced them as mentioned above. Questioning the same, this Criminal appeal came to be filed.

5. The learned counsel appearing for the appellants submitted that while he would not challenge the finding of guilt in respect of



I.P.C. offences, but only plead for reduction of sentence. He would however press for acquitting the appellants in respect of the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes Act 1989. The learned counsel pointed out that the defacto complainant is the wife of the victim. Ex.P.1 complaint is said to have been given by her. In the complaint, there is only a passing reference to caste. In other words, it does not find a prominent place in the complaint. The primary thrust of the complaint is only to the effect that the appellants physically assaulted P.W.2/victim. P.W.1 in her cross examination admitted that Ex.P.1 complaint was written by police and that P.W.1 did not lodge any written complaint. She also admitted that she did not read the complaint. She did not even know the contents of Ex.P.1 complaint. She stated that when her signature was sought, she affixed the same. However in her chief examination she supported the prosecution case in *toto*. P.W.2 victim had also supported the prosecution case. P.W.2 stated that there is no transaction between him and the appellants. There is no property dispute. There is no family issue. They do not have difference of opinion regarding any public issue. Both are residents of the same village. In fact they knew each other for quite a long time. P.W.3 also states that there is no prior motive between the two.

6. Therefore, I find it very difficult to believe that the appellants would have abused the victim by referring to his community status in a public place. Some kind of quarrel had occurred between the appellants on the one hand and P.W.2 on the other. About this, there is no dispute. As rightly pointed out by the learned Government counsel, victim had suffered a fracture in his hand and a minor head injury. These injuries could not be simulated. P.W.13 doctor who examined the victim had categorically stated that the victim had suffered fracture in his hand.

7. P.W.2 is an injured witness. He had directly implicated the appellants herein. The learned counsel appearing for the appellants would claim that P.W.6 was running a hotel in the very same village had engineered the lodging of the complaint in question. P.W.6 is the relative of the appellants. The appellants have given a complaint against P.W.6. Therefore, the submission of the appellants' counsel is that P.W.6 is behind the entire occurrence. It may be that P.W.6 in order to settle his scores with the appellants has given a communal colour to the developments. P.W.6 could not have invented the occurrence. The fact remains that P.W.2 had suffered a serious injury and he has implicated the appellants. The learned counsel appearing for the appellants does not challenge the conviction in respect of the I.P.C., offences. He has also pointed out that he only wants the appellants to be acquitted in respect of the offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes Act 1989. In this case, the occurrence is said to have taken place on 16.10.2010. The first Information Report was registered on the same day, based on Ex.P.1 complaint given by P.W.1 wife of the victim/defacto



complainant. She admitted that she was not aware of the contents of the complaint. P.W.2 was examined two days thereafter. Since all the prosecution witnesses had in unison admitted that there is no motive between the victim and the appellants, I find it very difficult to believe that the appellants would have uttered the offending expressions referring to the community status of the victim. Therefore, the conviction imposed by the Courts below on the appellants for the offences under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes Act 1989 alone is set aside.

8. Having regard to the evidence on record, the learned counsel appearing for the appellants does not challenge the finding of guilt in respect of the other offences. The appellants also undertake to compensate the victim. The learned counsel appearing for the appellants states that the appellants would deposit a sum of Rs.30,000/- each to the credit of S.C.No.32 of 2011 on the file of the learned I Additional Sessions Judge(PCR), Thanjavur. In addition, the appellants will execute an affidavit expressing their sincere apology to the victim for having caused injuries. The appellants further stated that they do not believe in untouchability. They subscribe to the principle of fraternity. While disbursing the compensation, of Rs.60,000/- to be deposited by the appellants to P.W.2/victim, a copy of the affidavit of apology to be executed by the appellants will also be handed over to the victim. The appellants shall deposit the compensation amount within a period of eight weeks from the date of receipt of a copy of this order.

9. The sentence of imprisonment imposed on the appellants is modified and reduced to the period already undergone by the appellants. This Criminal appeal stands partly allowed, accordingly. No Costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1. The I Additional Sessions Judge/PCR Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
 Thanjavur.



2. The District Munsif - Cum- Judicial Magistrate Court,
Papanasam.

3. The Inspector of Police,
Papanasam Police Station,
Thanjavur District.

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

Copy to

The Section Officer, Criminal Section, (2 COPIES)
Madras High Court-Madurai Bench,
Madurai.

Crl.A. (MD) No.172 of 2013
13.08.2019

VB (23.03.2020) 5P 7C