



Bail Slip

The Accused/Appellant Mr.Archunan, S/o.Salapathy, male has been released on bail as per the order of this Court dated 05.03.2013 made in Crl.MP(MD)1 of 2013 in Crl.A.(MD)No.76 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.76 of 2013

Archunan

... Appellant/Sole Accused

Vs.

1.State represented by
The Inspector of Police,
Town Police Station,
Palani, Dindigul District.

2.Alagarsamy

... Respondent/Complainant

(R2 impleaded as per order of this Court made in Crl.M.P.(MD) No.458 of 2018 in Crl.A.(MD)No.76 of 2013, dated 24.01.2018)

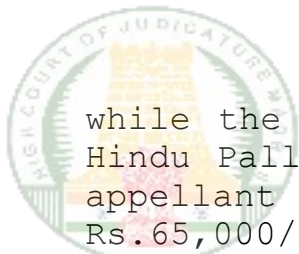
Prayer: Criminal Appeal filed under Section 374 of Cr.P.C, to call for the records pertaining to the judgment dated 27.02.2013 in S.C.No.273 of 2010, on the file of the Principal Sessions Judge, Dindigul District, Dindigul and set aside the same.

For Appellant	: Mr.T.A.Ebenezer
For Respondents	: Mrs.S.Bharathi
	Govt. Advocate (Crl. Side) for R1
	: Mr.V.Murugan for R2

J U D G M E N T

The appellant was convicted for the offence under Section 3 (1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 and Section 506(i) of I.P.C. and sentenced to undergo six months rigorous imprisonment and three months simple imprisonment respectively and also levied with fine, vide judgment dated 27.02.2013 in S.C.No.273 of 2010, on the file of the learned Principal Sessions Judge, Dindigul.

2.The prosecution case is that the appellant belongs to Hindu Gavara Naidu community, which is a notified backward class



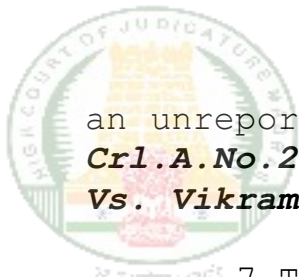
while the defacto complainant/second respondent herein belongs to Hindu Pallan Community, which is a notified scheduled caste. The appellant is said to have borrowed a sum of Rs.65,000/- from the defacto complainant in the year 2007. He did not repay the said amount. On 03.05.2009 at about 06.00 p.m., in Palani Bus stand near A.N.Bakery, when the defacto complainant demanded that the appellant should return the money, the appellant is said to have abused him by referring his community. In this regard, P.W.1/defacto complainant lodged Ex.P.1/complaint before Town Police Station, Palani, leading to registration of Ex.P.8/FIR in Crime No.1244 of 2009, for the offences under Sections 499 and 506(i) of I.P.C. and Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989. Since the offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 was disclosed, investigation was taken up by the Deputy Superintendent of Police, Palani. After conducting the investigation and recording the statements of the witnesses and after completing all the usual formalities, final report was laid before the learned Judicial Magistrate, Palani. Cognizance of the offences was taken and the case was committed to the Sessions Court vide P.R.C.No.31 Of 2010. The case was taken up for trial in S.C.No.273 of 2010, on the file of the learned Principal District and Sessions Judge, Dindigul District. Charges were framed against the appellant for the offences under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989 and Section 506(i) of I.P.C. The appellant denied the charges and claimed to be tried.

3.The prosecution examined as many as nine witnesses and marked Exs.P.1 to P.10. On the side of the accused, one Selvaraj was examined as D.W.1 and Ex.D.1 was also marked.

4.The learned Trial Judge after a detailed consideration of the evidence on record, convicted and sentenced the appellant as mentioned above. Challenging the same, this criminal appeal has been filed.

5.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to reverse the impugned judgment and acquit the appellant.

6.Per contra, the learned counsel appearing for the second respondent/defacto complainant submitted that the impugned judgment does not call for any interference and he also submitted detailed written notes. He placed reliance on the decision reported in **[2019 (2) Crimes 237 (Radhey @ Subedar and Ors Vs. State of U.P.)]** passed by the Honourable Allahabad High Court and



an unreported decision rendered by the Honourable Supreme Court in ***Crl.A.No.208 of 2019, dated 08.02.2019, (State of Madhya Pradesh Vs. Vikram Das).***

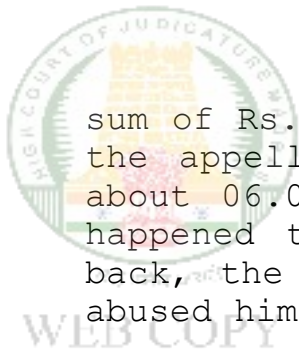
7.The learned counsel appearing for the second respondent/defacto complainant contended that all the ingredients, which make out an offence under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act), 1989, are more than present in this case. He pointed out that the abuse of the defacto complainant by referring to his community had taken place in a public place and in public view. In this case, the allegation made by the defcato complainant has been corroborated by P.W.2 to P.W.4. He pointedly drew my attention to the fact that P.W.2 is a Muslim and that therefore his testimony should carry greater credibility as he is not related to the victim. He also pointed out that the witnesses have totally supported the prosecution case and there is no contradiction or discrepancy between their testimony. He also submitted that the defacto complainant is not only a practising lawyer but also an old friend of the appellant and that there is absolutely no necessary for him to fabricate a false case against the accused/appellant.

8.The learned counsel for the second respondent would claim that even though he lodged Ex.P.1/complaint on the same day before the Sub Inspector of Police, Town Police Station, Palani, he did not issue any receipt and that is why he was constrained to move the Superintendent of Police on 14.05.2009. Since no action was taken even thereafter, he had to file a private complaint before the learned Judicial Magistrate, Palani. Following a direction issued by the learned Judicial Magistrate, FIR came to be registered on 14.12.2009. His pointed contention is that there is absolutely no delay whatsoever on his part and that he had reported the matter to the Police immediately after the occurrence. The learned counsel appearing for the second respondent submitted that P.W.2, P.W.3, P.W.6 and P.W.7 are very much independent witnesses. The learned counsel for the second respondent referred to the aforesaid two decisions for the proposition that appropriate sentence must be imposed on the offender in this case and that he would press for not just dismissal of this appeal but for enhancement of the sentence imposed on him.

9.The learned Government Advocate (Crl. Side) also supported the stand taken by the defacto complainant.

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

11.The case of the defacto complainant is that he lent a



sum of Rs.65,000/- to the appellant/accused on 25.11.2007 and that the appellant evaded repaying the said amount. On 03.05.2009 at about 06.00 p.m., in Palani Bus Stand near A.N.Bakkery, when he happened to meet the appellant and when he asked for the money back, the accused not only refused to return the money but also abused him by referring to his community.

12.I have to see whether the testimony of the prosecution witnesses inspires my confidence.

13.At the out set, it must be stated that the defacto complainant is a practicing lawyer. In his cross examination, he admitted that there was a financial transaction between him and the appellant in the year 2001. The accused after borrowing the said sum from the defacto complainant, did not repay the same. Therefore, the defacto complainant had to convene a Panchayat on 15.11.2005 to recover the loan amount with interest. The defacto complainant had admitted in his cross examination that on 15.11.2005, he managed to collect a sum of Rs.20,000/- from the accused. Ex.D.1 was the receipt issued by the defacto complainant on the said date i.e., 15.11.2005. Ex.D.1 was marked through the defacto complainant. In other words, the defacto complainant admits the contents and veracity and genuineness of Ex.D.1.

14.While so, the defacto complainant would claim that in the year 2007, the accused once again came to him and asked for hand loan of Rs.65,000/-. The defacto complainant would further claim that he was not possessed of the funds and that he pledged his wife's jewels with one Thaiya Sulthan and with the money raised thereby, gave a sum of Rs.65,000/- to the appellant as loan. He would further claim that even though the hand loan was availed on 25.11.2007, for almost 1 ½ years, the accused did not repay the principal or the interest. During this intervening period, there is no written communication from the defacto complainant to the accused calling upon him to repay the amount in question. It is admitted that the case of the appellant is that on 25.11.2007, he happened to meet the accused only by sheer chance. In other words, it was fortuitous encounter and not a pre-planned meeting.

15.It is further seen that P.W.2, who was examined in support of the prosecution case to corroborate the stand of the defacto complainant, was the person, who is said to have given a sum of Rs.25,000/- after accepting the pledge of the jewels of the defacto complainant's wife.

16.On a careful reading of the testimony of P.W.1, I find it very difficult to believe that the defacto complainant, who had already burnt his fingers with the appellant would have taken the



risk of advancing him a hand loan on a second occasion. I also find very difficult to believe that the appellant would have dared to abuse the defacto complainant, who not only belongs to scheduled caste community but is also a practicing lawyer. The expression "proved" has been defined in Section 3 of the Indian Evidence Act, as follows:-

"Proved" - A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case, to act upon the supposition that it exists."

17.Thus on a consideration of the evidence on record, I am unable to persuade myself to believe that the occurrence as alleged by the defacto complainant could have ever happened. The version projected by the defacto complainant is inherently improbable. The Court below erred in finding the appellant guilty. The impugned judgment is set aside and the appellant is acquitted and the criminal appeal is allowed. The fine amount, if any, paid by him shall be refunded. The bail bond, if any, executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Ias

To:

1.The Principal Sessions Judge,
Dindigul District.

2.The Inspector of Police,
Town Police Station,
Palani, Dindigul District.

Copy to
The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-82506[F] dated 20/08/2019
+1 CC to M/s.V. MURUGAN, Advocate (SR-82543[F] dated 20/08/2019)

Crl.A.(MD)No.76 of 2013

20.08.2019