

**BAIL SLIP**

The Appellant/Accused Namely Sengottaiyan, was released on bail as per order of this court dated 30.09.2019 and made in MP(MD) No.1 of 2014 in CRL.A(MD)No.274 of 2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.12.2019**

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**Crl.A. (MD)No.274 of 2014**

Sengottaiyan .. Appellant/ sole accused

Vs.

The Deputy Superintendent of Police,
Kamuthi Sub division,
Ramanathapuram District
in crime No.360 of 2012

.. Respondent/complainant

PRAYER: Petition filed under Section 374 of Criminal Procedure Code, to set aside the judgment passed by the Principal Sessions Judge, Ramanathapuram in Special S.C.No.37 of 2014 dated 11.09.2014 and to acquit the appellant/accused herein from the charges.

For Appellant : Mr.G.Vishnuram

For Respondent : Mr.K.Suyambulinga Bharathi,
G.A., (Crl. Side)**JUDGMENT**

The appellant is the single accused in this appeal. He was charged for the offence under Sections 354 I.P.C. and Section 3(1) (xi) of SC/ST (POA) Act. The trial Court, by its judgment dated 11.09.2014, found the appellant not guilty for the offence under Section Section 3(1)(xi) of SC/ST (POA) Act acquitted and found the appellant guilty for the offence under Section 354 IPC sentenced him to undergo 6 months S.I and to pay a fine of Rs.1,000/- in default to undergo one month SI. Against the said conviction and sentence, this present appeal has been filed.

2.The prosecution, in this case, has examined P.Ws.1 to 9 and marked Exs.P1 to 8.

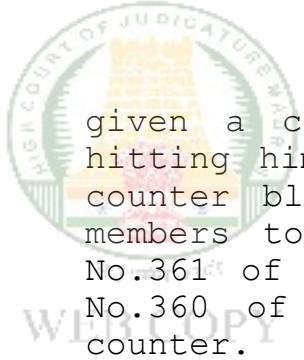


3.The case of the prosecution is that the defacto complainant/PW1 belongs to Hindu Pallar Community and the appellant belongs to Hindu Maravar community and when P.W.1 was going for her work, the appellant used to give trouble to her. As such, on 28.11.2012 at about 02.00 p.m., when P.W.1 was in her house, the appellant came there and uttered filthy language by using her caste name and when P.W.2 came out of her house, the appellant caught her hand and pulled her. P.W.1 gave a complaint/Ex.P1 to P.W.8, Sub Inspector of Police and a case came to be registered for the offences under Sections 354 IPC and Section 3(1)(xi) of SC/ST (POA) Act by P.W.8. Thereafter, P.W.9, Assistant Superintendent of Police took up investigation, visited the scene of occurrence, prepared observation mahazer, examined witnesses to the occurrence. Thereafter, arrested the accused, obtained community certificates for both P.W.1 and the appellant and after completion of investigation, he filed the charge sheet in this case.

4.The contention of the appellant is that the appellant is having a tractor and used to do agricultural work on hire. P.W.1's father owns some land, in which, the appellant had done the work and there was due in payment. When the same was questioned with P.W.2, brother of P.W.1, there was altercation and P.W.2 had hit the appellant with cricket bat on his right eye as a defence, the appellant has been implicated in this case using the sister of P.W.2, who is P.W.1 in this case. The other witnesses are all close relatives and the investigating officer, had not looked into these facts and filed the charge sheet.

5.He further submitted that P.W.9, investigating officer, who is a newly posted as Deputy Superintendent of Police hails from North India, is not aware of the social set up and is not converse to the local language at its dialect, proceeded on wrong notion. He further submitted that P.W.2 is the brother of P.W.1, who hit the appellant and P.W.3 is the junior father of P.W.1, who has given an exaggerated version as though the appellant was pulling the hands of P.W.1. P.W.1 does not say so. Further, P.W.1 stated that the appellant, after calling her, abusing her, fled away from the scene of occurrence. P.Ws.2 and 3 state that the appellant had fallen and thereafter, he ran away from the scene of occurrence.

6.Further, the investigating officer P.W.9 though states that the appellant was subjected to medical examination, there is no evidence to show that the appellant was subjected to medical examination and there is no whisper about the injuries sustained by the appellant, which probablise the case of the appellant that the appellant was attacked by P.W.2. Further, with regard to the version that the appellant was in a drunken state, there are no materials. The appellant was arrested on the same day of occurrence at about 06.15 p.m. He further submitted that the appellant had given a complaint in crime No.361 of 2012, after the appellant had

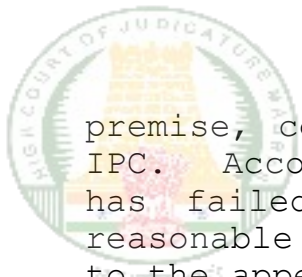


given a complaint to the respondent police against P.W.2 for hitting him with cricket bat and for the injury sustained. As a counter blast and defensive, P.W.1 was used by P.W.2 and family members to give a false complaint which got registered in crime No.361 of 2012 and this false case has been registered as crime No.360 of 2012, which would clearly show that it is case and counter.

7.Further, the lower Court disbelieved the evidence with regard to the offence under Section 3(1)(xi) of SC/ST (POA) Act acquitted the appellant. As per the charges, the ingredients of the offences are identical and once the trial Court had come to a conclusion that there is no case against the appellant for the offence under Section 3(1)(xi) of SC/ST (POA) Act, naturally, the same benefit to be extended to the appellant for the offence under Section 354 IPC also. But, on a wrong premise, the lower Court convicted the appellant for the offence under Section 354 IPC. Hence, he prayed for allowing the appeal.

8.The learned Government Advocate (criminal side) submitted that in this case, P.W.1 is the victim, P.W.2 is her brother and P.W.3 is the neighbour of P.W.1 and they are all eye witnesses. These witnesses are natural, corroborated to each other. P.W.4 is the observation mahazer witness. P.W.5 is the Tahsildar, who had issued community certificates of the appellant and P.W.1. P.W.8, Sub Inspector of the police, who registered the complaint. P.W.7 is the woman constable, who assisted P.W.2 to record the statement of witnesses. The lower Court on proper analysis on the materials and evidence, had rightly given a finding that the offence under Section 3(1)(xi) of SC/ST (POA) Act would not get attracted and there are materials for outraging the woman modesty and convicted the accused for the offence under Section 354 IPC. He further submitted that the appellant also lodged a complaint against P.W.2, brother of P.W.1, who hit the appellant on his right eye with cricket bat and a case came to be registered in crime No.361 of 2012 for the offence under Section 294(b) and 323 IPC and thereafter, the case was taken on file as STC No.643 of 2012 by the Judicial Magistrate, Kamuthi and P.W.2 pleaded guilty and paid the fine amount.

9.Considering the rival submission and perusal of the materials, this Court finds that P.W.2 attacked the appellant on his right eye with cricket bat, for which a case has been registered and the same was taken on file in STC No.643 of 2012 and P.W.2 pleaded guilty and paid the fine amount. The said fact would strengthen the probability of the appellant's contention that since, he was hit by P.W.2 with the cricket bat on his right eye and sustained injury, to safe guard him, P.W.2 implicated the appellant by using his sister, P.W.1 and as such, the appellant has been falsely implicated. Further the evidence of P.W.3 does not inspire confidence. The trial Court had not appreciated these material facts, under wrong



premise, convicted the appellant for the offence under Section 354 IPC. Accordingly, this Court is of the view that the prosecution has failed to prove the case as against the appellant beyond reasonable doubt and as such, the benefit of doubt should be given to the appellant and he is liable to be acquitted from the charges.

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10. Accordingly, this criminal appeal is allowed and the conviction and sentence imposed on the appellant by Principal Sessions Judge, Ramanathapuram in Special S.C.No.37 of 2014 dated 11.09.2014 is set aside and the appellant is acquitted of all the charges levelled against him. The fine amount, if any, paid by the appellant, shall be refunded to him. The bail bonds, if any, executed by him, shall stand cancelled.

Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar(CS)

Arul
To

1.The Deputy Superintendent of Police,
Kamuthi Sub division,
Ramanathapuram District.

2.The Principal Sessions Judge, Ramanathapuram

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

+1 CC to M/s.M.VEILKANIRAJU, Advocate (SR-103612[F] dated 05/12/2019)

Crl.A.(MD)No.274 of 2014
05.12.2019

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