



CRL. A. (MD) NO. 275 of 2014

BAIL SLIP

The Appellant / Accused namely Selvam @ Kalaiselvam, was released on bail as per order of this Court dated 09.10.2014 and made in MP(MD)No.1 of 2014 in Crl.A.(MD)No.275 of 2014 on the file of theis Court.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 19.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) NO. 275 of 2014

Selvam @ Kalaiselvam .. Appellant / Sole Accused
- Vs -

The State represented by
the Deputy Superintendent of Police,
Thiruvaiyaru Sub Division,
Thanjavur District.

(In Crime No.256 of 2007) .. Respondent / Complainant

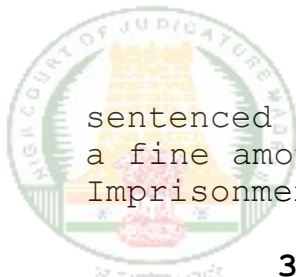
Prayer : Appeal filed u/s 374 (ii) of the Code of Criminal Procedure, to call for the records in S.S.C.No.44 of 2012, on the file of the learned I Additional District Sessions Judge (PCR), Thanjavur and set aside the judgment dated 14.08.2014, by allowing the Appeal and acquit the appellant.

For Appellant : Mr.C.Arul Vadivel @ Sekar
For Respondent: Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment passed in S.S.C.No.44 of 2012, dated 14.08.2014, on the file of the learned I Additional District Sessions Judge (PCR), Thanjavur.

2. The appellant is the sole accused in this case. The appellant was tried by the Trial Court for the offences under Sections 426, 355, 323 r/w 3 (1) (x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. On conclusion of trial, the trial Court had acquitted the appellant for the offences under Sections 426, 355, 323 I.P.C., and convicted for the offence under Section 3 (1) (X) of the SC / ST (Prevention of Atrocities) Act, 1989 and



sentenced him to undergo two years Rigorous Imprisonment and to pay a fine amount of Rs.500/- in default to undergo three months Rigorous Imprisonment. Against which, the present Appeal has been filed.

3. The case of the prosecution is that on 04.09.2007 at about 02.00 p.m., when P.W.1 and P.W.4 along with Mohanraj were taking bath at Ayyanar tank, Vilangudi Village, at that time, the appellant, who was having lands nearby, came there, questioned P.W.1 about taking bath in the public tank, taking offense of P.W.1, belonging to Scheduled Caste community, the appellant calling P.W.1 by his caste name. When the same was questioned by P.W.1, P.W.4 and Mohanraj, P.W.1 was beaten with a wooden log, his shirt was burnt and others were also attacked, thereafter, P.W.5 / uncle of P.W.1, who had come back, took P.W.1 lodged a complaint before the respondent Police. P.W.7-Deputy Superintendent of Police registered the complaint, visited the scene of occurrence, prepared Observation Mahazar and thereafter, enquired the witnesses and filed charge sheet in this case.

4. In order to prove the case of the prosecution, on the side of the prosecution as many as 7 witnesses were examined as P.W.1 to P.W.7 and 9 documents were marked as Ex.P.1 to Ex.P.9 and two material objects were marked as M.O.1 and M.O.2. On the side of the accused, no witness was examined nor any document was marked.

5. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

6. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid, challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

Submissions

7. The learned counsel appearing on behalf of the appellant made the following submissions:

- The contention of the learned counsel appearing for the appellant was that there is considerable delay in lodging a complaint. Though the occurrence is said to have taken place on 04.09.2007 at about 02.00 p.m., the complaint was lodged only on 05.09.2007 and no reason was given for the delay.
- P.W.1 admits that a complaint came to be lodged only after consultation with P.W.5 / uncle of P.W.1.
- It is the case of the appellant that there is animosity between P.W.5 and the appellant with regard to grazing of the cattle in his field. There were three persons at the occurrence spot viz., P.W.1, P.W.4 and one Mohanraj. On the prosecution side, P.W.1 and P.W.4 were only examined. The said Mohanraj was examined by the prosecution.



- There are material contradictions with regard to the evidence of P.W.1 and P.W.4. The lower Court on considering the contradictions, had acquitted the accused from other offences and on a wrong premises, had convicted the appellant for the offence under Section 3 (1) (x) of SC/ST Act, 1989. The prohibitory words, which are said to have been used by the appellant against P.W.1 has been narrated by P.W.1 and P.W.4, which are contradictory to each other in all aspects. Further, the evidence of P.W.4 shows that he was attacked with a wooden log and he sustained injuries, but, no such wooden log has been produced, despite, it has been shown in seizure mahazar. The presence of P.W.4 is highly doubtful.
- P.W.4 is the other person, who was present at the occurrence spot. His evidence is also contra to the evidence of P.W.1.
- P.W.5, who is the uncle of P.W.1, informed about the incident later and thereafter, he had gone to the Police Station along with P.W.1, lodged a complaint. P.W.5 has animus against the appellant.
- P.W.7 is the Deputy Superintendent of Police, who completed major portion of the investigation on 05.09.2007 and after registration of the First Information Report, he visited the scene of occurrence, seized material objects, enquired P.W.1 and P.W.4 and also other witnesses, prepared rough sketch, received Community Certificate of the appellant. On 19.09.2007, he received Accident Register from the Government Hospital and thereafter, on 20.09.2007, he filed charge sheet before the learned Judicial Magistrate.
- It is seen that even before the receipt of Authorisation order issued under Section 7 (1) of the Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Rules, 1995, P.W.7- Investigating Officer commenced the investigation on 05.09.2007. But, he received the authorisation order only on 07.09.2007. The said Rule reads as follows:-

"An offence committed under the Act shall be investigated by a Police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government / Director General of Police / Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time."

- The penultimate stage of investigation was completed by 07.09.2007. Hence, the entire investigation is nonest in the eyes of law.
- The learned counsel appearing for the appellant placed reliance of the judgment of this Court reported in **2015 (2) MWN (Cr.) 628-(Periyasamy and another Vs. State represented by the Deputy Superintendent of Police, Avinashi Sub Division, Kovilpalayam Police Station, Coimbatore District)**.



8. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

- The learned Government Advocate (Criminal side) appearing for the respondent submitted that on the prosecution side 7 witnesses were examined and 9 documents were marked and two material objects were marked.
- P.W.1 and P.W.4 along with one Mohanraj were taking bath in a public tank on 04.09.2007. At that time, the appellant took offense of P.W.1, belonging to Scheduled Caste community, taking bath in the public tank, abused P.W.1 with prohibitory words, by calling him by his caste name. When P.W.1 questioned the same, P.W.1 and P.W.4 were beaten with a wooden log by the accused and burnt the shirt of P.W.1. Thereafter, on receipt of complaint, First Information Report came to be registered and the Deputy Superintendent of Police visited the scene of occurrence, prepared Observation Mahazar, seized the match box M.O.1 and burnt shirt / M.O.2. Thereafter, the appellant was arrested and confession was recorded.
- P.W.1 was sent to the Doctor to take treatment for the injuries sustained by him. Ex.P.6 is the accident register, in which the certificate for wound was also found. Though, the trial Court had acquitted the appellant for other charges, as regards the charge for the offence under Section 3 (1) (X) of the SC/ST Act, the trial Court, on the evidence of P.W.1 and P.W.4 and other materials had convicted the accused and prayed for dismissal of the Appeal.

9. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

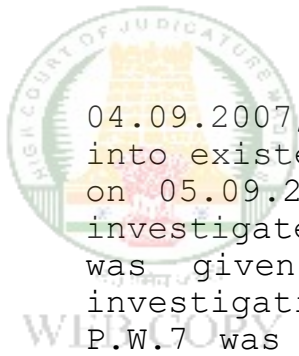
Discussions:-

10.(1). On rival submissions made by the learned counsel and also on perusal of materials, it is seen that P.W.1 had gone along with P.W.4 and one Mohanraj and also accompanied by P.W.5 to the Hospital. The said Mohanraj had not been examined in this case.

10.(2). As regards the abusive and prohibitory words, by calling his caste name, the version given by P.W.1 and P.W.4 and verses in Ex.P.1-complaint, are contradictory to each other.

10.(3). Further the presence of P.W.4 in the scene of occurrence is highly doubtful. P.W.4 had given an exaggerate version as though he was also beaten up with a wooden log, sustained injuries, no corresponding medical records produced. Further, the version of P.W.1 and P.W.4 are totally different. P.W.1 in his evidence states that he was beaten as well as his shirt was burnt by the accused. The wooden log, is not produced as a material object in this case.

10.(3). There seems to be some animosity between P.W.5 / uncle of P.W.1 with the appellant. In this case, the complaint came to be lodged on 05.09.2007, but P.W.1, P.W.2, P.W.4 and P.W.5 clearly state that they were examined by the Investigating Officer on



04.09.2007, which cast shadow and doubt with regard to Ex.P.1 coming into existence. As per Ex.P.1, the complaint had been received only on 05.09.2007. Further the proceedings for giving permission to investigate the offence under SC/ST Act as per Authorisation Letter, was given on 07.09.2007. The examination of witnesses and investigation has been almost completed by 06.09.2007. Even before P.W.7 was given authority power to investigate the case and most part of the investigation has been completed by him, investigation carried out prior to 07.09.2007 is without authority. The judgment of this Court in the case of **Periyasamy and another Vs. State represented by the Deputy Superintendent of Police, Avinashi Sub Division, Kovilpalayam Police Station, Coimbatore District** referred supra. Paragraph No.40 of the judgment is as follows:-

"Now to investigate a special type of offence under SC & ST (P.A.) Act, which is a social crime certain mandatory statutory provision has been made to undertake investigation and complete the investigation within a time frame when that is violated, the Court has to set as naught such process of investigation, that is how in Sambasivam (Supra) this Court held that any investigation done in violation of Rule 7 (1), will vitiate the entire Criminal proceedings. Thus, the principles laid down in the said decided cases squarely applies to the facts of this case."

11. In view of the above and on the contradiction statement of the witnesses cast. serious doubts with regard to seizure and preparation of mahazar, coupled with the fact that the trial Court had disbelieved the evidence of the witnesses for one set of fact by convicted the appellant on the same version. Giving benefit of doubt, this Court finds that the prosecution has failed to prove the case beyond reasonable doubts and hence, the appellant is acquitted for the charge framed against him.

Conclusion

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.S.C.No.44 of 2012, on the file of the learned I Additional District Sessions Judge (PCR), Thanjavur, dated 14.08.2014, is set aside and the appellant is acquitted of the charge framed against him. The bail bonds, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1) The I Additional District Sessions Judge (PCR),
Thanjavur.

2. The Principal Sessions Judge, Thanjavur

3. The Deputy Superintendent of Police,
Thiruvaiyaru Sub Division, Thanjavur District.

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

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

+1 CC to M/s.C.ARUL VADIVEL@SEKAR, Advocate (SR-106120[F]

JUDGMENT IN
CRL. A. (MD) NO. 275 of 2014
Dated **19.12.2019**

SMA/22/01/2020/6P/8C