



CRL. A. (MD) NO. 287 of 2014

Bail Slip

Appellant / Accused viz., Marimuthu, S/o.Nadesa Vaniyar was already released on bail vide this Court order dt.17.10.2014 and made in MP(MD)No.1 of 2014 in CrI.A(MD)No.287/2014.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 04.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) No. 287 of 2014

Marimuthu .. Appellant / Accused

- Vs -

The State represented by
the Inspector of Police,
Nanilam Police Station,
Thiruvarur District.

(Crime No.67 of 2011) .. Respondent / Complainant

Prayer : Appeal filed u/s 374 (ii) of the Code of Criminal Procedure, to set aside the order and judgment passed in Spl.S.C.No.20 of 2012, dated 01.09.2014, by the learned I Additional District Sessions Court, Thanjavur.

For Appellant : Mr.A.Arun Prasad

For Respondent : Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment passed in Spl.S.C.No.20 of 2012, dated 01.09.2014, by the learned I Additional District Sessions Court, Thanjavur, convicting the accused for the offences under Sections 294 (b), 323 of the Indian Penal Code r/w Section 3 (1) (x) of the SC/ST Act.

2. The appellant is the sole accused in this case. The Trial Court imposed a sentence of two years Rigorous Imprisonment for the offence under Section 3 (1) (X) of SC / ST Act with fine of Rs.500/- in default to undergo three months Simple Imprisonment and imposed a sentence of six months Rigorous Imprisonment for the offence under Section 323 I.P.C. with fine of Rs.250/- in default to undergo one month Simple Imprisonment



3. The facts of the case are briefly stated hereunder:

3.(1). The case of the prosecution is that P.W.1 is working as an Assistant in the Keelakudi Panchayat Union. On 26.02.2011, at about 10.30 a.m., P.W.1 along with P.W.2, P.W.3 and P.W.4 went to the appellant's house to issue pamphlets and also to receive his signature in the tender note book regarding to auction fishes in the pond and coconut trees, which belong to the Kelakudi Panchayat Union. But the appellant refused to receive the pamphlets and did not sign in the tender note book. Suddenly, the appellant abused P.W.1 by mentioning his Caste name and also assaulted him on his shoulder and chest. Thereafter P.W.1 was taken to the Nanilam Government Hospital by P.W.5, where P.W.1 was given treatment. On receipt of the information, P.W.12, who is the Sub Inspector of Police went to the Hospital, received complaint from P.W.1, after returning to the Police station, registered a case in Crime No.67 of 2011, for the offences under Sections 294(b), 323 I.P.C. and Section 3 (1) (x) of the SC/ST Act, registered F.I.R-Ex.P.8. The printed F.I.R. sent to higher officials.

3.(2). P.W.11, Deputy Superintendent of Police, received the authorisation order-Ex.P.7, from the Superintendent of Police, taken up investigation, visited scene of occurrence, recorded statement of witnesses, prepared Observation Mahazar-Ex.P.9, Rough Sketch-Ex.P.10 and arrested the appellant. Subsequently, P.W.11 was transferred to another place and he handed over case records to P.W.13, who was holding additional charge. The Deputy Superintendent of Police, received the authorisation order-Ex.P.11 from the Superintendent of Police, continued the investigation, obtained Community Certificate-Ex.P.6 of P.W.1 and Community Certificate-Ex.P.4 of the appellant from P.W.10-Tahsildar. He obtained Accident Register-Ex.P.5 from P.W.9, the Doctor from Nannilam Governement Hospital, for the injuries sustained by P.W.1, which were simple injuries. P.W.9 sent P.W.1 to Thiruvarur Governement Hospital for further treatment. Thereafter, the Police completed the investigation, filed a charge sheet against the appellant for offences under Sections 323 I.P.C. and Section 3 (1) (x) of the SC/ST Act, before the learned Ist Additional Sessions Court, Tanjore.

4. In order to prove the case of the prosecution, on the side of the prosecution as many as 13 witnesses were examined as PW.1 to PW.13 and 11 documents were marked as Ex.P.1 to Ex.P.11. No material objects were marked. On the side of the accused, one witness was marked as D.W.1 and 4 documents were marked as Ex.D.1 to Ex.D.4.

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 learned counsel appearing for the appellant would submit that already there is a civil dispute between the appellant and the Panchayat President namely Manivannan regarding tender of the pond, situated near the appellant's land. If any tender / auction is conducted in the said pond, it would affect his agricultural activities.
- He would further submit that already there is a dispute regarding a land, between P.W.5 / Mullaiventhan, who is the brother of Manivannan, the President of the Panchayat Union.
- He would further submit that the father of P.W.2 viz., P.W.7 / Thirisangu, has also filed a civil suit against the appellant and others.
- He would submit that on the date of occurrence, the tender notice was issued by P.Ws.1, 2, 3 and 4 to the appellant. At that time, the appellant is said to have received tender note book and thereafter, refused to return the same. P.W.1 was abused by calling his caste name and the appellant hit P.W.1 on his chest and shoulders and P.W.1 was taken to Hospital by P.W.5. P.W.1 was admitted in the Nannilam Government Hospital, got treated by P.W.9, thereafter, on request of P.W.1, he was referred to Thiruvavarur Government Hospital. In this case, the Doctor, who gave treatment in Thiruvavarur Government Hospital, was not examined. Further witnesses namely P.W.2, 6 and 7 are relatives, they all belong to same family.
- He would submit that the tender notice which is alleged to be taken away by the appellant was not seized, the Panchayat President has not given any complaint.
- He submits that P.W.3, the witness to the occurrence had not supported the case of the prosecution.
- P.W.4 has stated in his evidence that P.W.1 sustained blood injuries. But in the cross-examination, he states that he was not present in the scene of occurrence. From the medical records, it is seen that P.W.1 had not sustained any injuries. The presence of P.W.4 in the scene of occurrence is highly doubtful.
- Further, the appellant had examined D.W.1, the Doctor from the Nannilam Government Hospital and on the side of the accused, Ex.D.1, Ex.D.2, Ex.D.3 and Ex.D.4 were marked. Ex.D.1 is the medical record of P.W.2, from which, it could be seen that P.W.2 was brought by Manivannan, the President of Panchayat Union for medical treatment. On the other hand, the case is that P.W.1 was brought by P.W.2 as mentioned in Ex.P.5-Accident

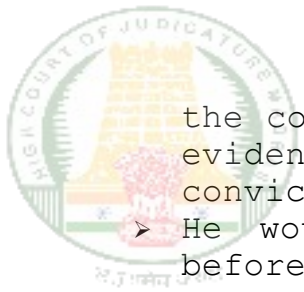


Register. Hence, P.W.2's version is unbelievable. As per Ex.D.1, P.W.1 was admitted in the Hospital. Then, she could not have accompanied P.W.1 for treatment and this fact has not been considered by the trial Court. Adverse, interference under Section 141 (g) has to be drawn.

- He further submitted that the entire documents and witnesses have been fabricated against the appellant, since the appellant was opposing Manivannan, the President of the Panchayat Union in conduct of auction of the pond. Hence, he had been falsely implicated.
- Further P.W.9-Doctor clearly states that on request of P.W.1, he was referred to the Government Hospital, Thiruvavarur, from Ex.P.5-Accident Register, it is only simple injury. Further, P.W.9 admits that no injury leading to pain were seen or observed, the recordings in Ex.P.5 was made at the instance of P.W.1
- The appellant had marked Ex.D.2 to Ex.D.4, from which, it could be seen that the appellant had earlier sustained fractures and he was not in a position to move freely. Infact after being arrested, he was taking treatment as inpatient for a period of one week. Hence, the evidence of P.W.1 is unbelievable.

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

- Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submitted that P.W.1, P.W.2, P.W.3 and P.W.4 are relatives. They went to the appellant's house to distribute pamphlet. On the date of occurrence, the appellant abused P.W.1 by using prohibitory words regarding his caste name. He further submitted that not only utterance of caste name. P.W.1 was subjected to physical attack by the appellant, which led to registration of the First Information Report. Thereafter, P.W.1 was taken to Hospital by P.W.2 and he was treated as an in-patient for more than ten days from 26.02.2011 to 04.03.2011.
- He would further submit that P.W.2 to P.W.4 have clearly stated in their evidence that P.W.1 was called by his caste name in the public place.
- P.W.8, who is the Tahsildar, had given a Community Certificate of P.W.1 and the appellant.
- P.W.12 is the Sub Inspector of Police, who received the information from the Nannilam Government Hospital, received the complaint, registered First Information Report-Ex.P.8.
- P.W.11 is the Investigating Officer, who visited the scene of occurrence, recorded the statement of witnesses, prepared observation mahazar, collected the medical records and Community Certificate of P.W.1. Subsequently, he was transferred and placed all records to the concerned Police Station, P.W.13, the Deputy Superintendent of Police was conducted further investigation and filed charge sheet before



the concerned Court. The lower Court on proper analysis of the evidence and the materials available on record had rightly convicted the appellant.

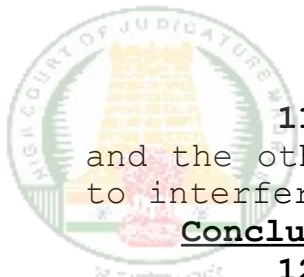
- He would submit that there was sufficient evidence let in before the trial Court.

WEB COPY

9. Considered the elaborate submissions of the learned counsel for the appellant and the submissions of the learned Government Advocate (Criminal side) and perused the materials and the pleadings placed on record.

10. Discussion:-

- It is seen that certain case of the prosecution is that P.W.1, P.W.2, P.W.3 and P.W.4 were together went to the appellant's home and distributed auction public notice. At that time, the appellant is said to have abused P.W.1 by using prohibitory words, by calling upon his caste name and attacked him. P.W.1 was taken to Government Hospital, Nannilam, by P.W.2 for treatment, thereafter, taken to Government Hospital, Thiruvavarur, by P.W.5, the brother of Panchayat President. The witnesses have admitted about cases pending between the appellant and P.W.5, P.W.7 and others. They were hostile towards the appellant.
- Ex.D.1 is the medical record of P.W.2, from which, it could be seen that P.W.2 was brought by Manivannan for treatment. On the other hand, P.W.1 was brought by P.W.2 as can be seen from Ex.P.5-Accident Register. This fact suppressed by the prosecution, P.W.2's version is doubtful.
- P.W.3 has not supported the case of the prosecution.
- P.W.4 states that P.W.1 sustained blood injuries. On the other hand, P.W.9-Doctor, who treated P.W.1 and issued Ex.P.5-Accident Register, categorically states that no injuries were found and it was claim of P.W.1 that he was suffering from pain. P.W.4 admits about the animosity between the Panchayat President namely Manivannan, brother of P.W.1 and P.W.7. P.W.4 admits about the presence of said Manivannan in the Court. Under such circumstances, the presence of P.W.4 is doubtful.
- There is a civil dispute pending between the appellant and P.W.5, brother of Manivannan, the President of the Panchayat Union regarding the auction of the pond in the Village. To Take revenge, P.W.1 is used as a weapon by Manivannan, Panchayat President of the Union. The evidence of P.W.1 does not inspire confidence. The presence of P.W.2 is highly doubtful. P.W.4 evidence is contrary to the evidence of P.W.9. P.W.5 is the brother of Manivannan, with whom, the appellant was having feud. All the witnesses are inimically deposed against the appellant, vital materials are suppressed.
- The prosecution has failed to prove the case beyond reasonable doubts.



11. Considering the rival submissions as discussed above and the other materials available on record, this Court is inclined to interfere with the findings of the Trial Court.

Conclusion

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in Spl.S.C.No.20 of 2012, on the file of the learned 1st Additional District Sessions Judge, Thanjavur, dated 01.09.2014, is set aside and the appellant is acquitted of the charges framed against him. The bail bond, 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 (Crl.side)

// True Copy //

Sub Assistant Registrar(CS)

tsg

To

1)The Ist Additional District Sessions Court, Thanjavur.

2)The Principal District Sessions Judge, Thanjavur

3) The Inspector of Police,

Nannilam Police Station, Thiruvarur District.

4) The Additional Public Prosecutor,

Madurai Bench of Madras High Court,
Madurai.

5) The Section Officer, (2 copies)

Criminal Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.ARUN PRASAD, Advocate (SR-103496[F] dated 05/12/2019

JUDGMENT IN

CRL.A. (MD) NO.287 of 2014

Dated 04.12.2019

SMA/02/01/2020/6P/8C