

BAIL SLIP

The Appellants herein/Accused viz., 1.Dhanasekar (A1), S/o.Marimuthu and 2.Paneerselvam (A2), S/o.Mayavan, Were directed to be released on Bail as per order of this Court dated 02.11.2010 made in MP.No. 1 of 2010 in CrI.A.No. 661 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No.661 of 2010

1.Dhanasekar
2.Paneerselvam ... Appellants / Accused Nos.1 & 2

versus

The Deputy Superintendent of Police,
Gingee,
Villupuram District.
[Kedar Police Station,
Crime No.61/2009] ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 06.10.2010 made in S.C.No.301 of 2009 by the learned Special Judge-cum-Principal Sessions Judge, Villupuram.

For Appellants : Mr.M.Gnanamoorthy
for Mr.N.Suresh
For Respondent : Mr.G.Ramar
Government Advocate [Criminal Side]

J U D G M E N T

The appellants are arrayed as A-1 and A-2 in S.C.No.301 of 2009 on the file of the learned Special Judge-cum-Principal Sessions Judge, Villupuram. Along with one more accused [A-3], they stood charged for the offences under Sections 341, 294, 323, 506(i) IPC and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. By the judgment dated 06.10.2010, the Trial Court convicted them under Sections 323, 506(i) IPC and Section 3(1)(x) of SC/ST Act. Further, the Trial Court sentenced

them as follows:-

Sl.No	Offence	Period of Punishment
1.	323 IPC	Sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.500/- each, in default to undergo Simple Imprisonment for two months.
2.	3(1)(x) of S.C/S.T. Act	Sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.20,000/- each, in default to undergo Rigorous Imprisonment for six months.
3	506(i) IPC	Sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for two months.

Challenging the said conviction and sentence, the appellants are before this Court with the present Criminal Appeal.

2. The case of the prosecution in brief, is as follows:-

2.1. P.W.1 [Arunlalgiri] was residing in Vengathur. He belongs to the community of Hindu Adi Dravidar recognized as Scheduled Caste. The appellants and one more accused in this case, belongs to the community of Hindu Vanniar. On 14.05.2009, at about 12.00 p.m., when P.W.1 driven his two wheeler from Surapattu to Vengathur, near Murugan Temple in Vengathur, out of previous enmity arising in the Local Body Election, all the accused in this case intercepted the P.W.1 and abused him by referring his caste name. In the course of the same transaction, both the appellants along with one another accused by using the wooden log attacked the P.W.1 on his cheek and left ear. Further, they made life threat to P.W.1.

2.2. The said occurrence had been witnessed by P.W.3 to P.W.5. During the time of occurrence, P.W.3 to P.W.5 are all present in the occurrence place, interfering with the quarrel happened between the accused and the P.W.1, and attempted to specify the same. Subsequent to the occurrence, P.W.1 went to the Kedar Police Station and lodged a complaint under Ex.P1. After receiving the complaint, the Police Officer, who present in the Police Station, make arrangements for sending the P.W.1 to the Hospital on 14.05.2009, at about 05.15 p.m.

2.3. On receipt of the complaint from P.W.1, one Mani, the then Special Sub Inspector of Police, Kedar Police Station, registered a case in Crime No.61 of 2009, under Sections 341,

294(b), 323, 506(ii) IPC and 3(1)(x) of SC/ST Act. Ex.P.5 is the printed First Information Report. After registration of the case, he made arrangements for sending the copy of the First Information Report to the Deputy Superintendent of Police for initiating investigation.

2.4. In the meantime, P.W.6 [Dr.Manivannan] when he was working as a Doctor in Villupuram Government Medical College Hospital, treated the P.W.1 for the injuries sustained by him. During the time of examination of P.W.1, he found the following injuries:

- (i) swelling of 3 X 1 cm in the left side of the upper lip.
- (ii) contusion of 4 X 2 cms in the right cheek
- (iii) pain and blocking sensation in the left ear.

According to him, injury nos.1 and 2 are simple in nature and the third injury is grievous in nature. In this regard, he issued a Wound Certificate under Ex.P.4.

2.5. On receipt of the First Information Report, P.W.7 [Rajendran], the then Deputy Superintendent of Police, Chenji, rushed to the scene of occurrence and in the presence of one Manikaraja and P.W.5 [Saravanan], he prepared an Observation Mahazar under Ex.P.3. Further, he drawn a Rough Sketch under Ex.P.6. Thereafter, he examined the witnesses and recorded the statements. Before completion of investigation, he sent the requisition to P.W.2 [Rajendra Doss] for issuing the Community Certificate in respect to P.W.1 and to the accused.

2.6. On receipt of the requisition given by P.W.7, P.W.2, the then Tahsildar, Villupuram, issued a Community Certificate under Ex.P.2, in which, he certifies that all the accused in this case belongs to the community of Vanniar. Further, in respect to P.W.1, he issued a Certificate stating that P.W.1 belongs to the community of Hindu Adi Dravidar recognized as a Scheduled Caste. After receiving the Certificate issued by P.W.2, P.W.7 examined the Doctor and received the Wound Certificate. Finally, on completion of the investigation, he came to the positive conclusion that, the appellants and other accused in this case, committed the offences under Sections 341, 294, 323, 506(ii) IPC r/w 3(1)(x) of SC ST Act and filed a Final Report against the accused for the said offences.

3. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment, for which, all the accused pleaded not guilty. In order to prove their case, on the side of the prosecution, 7 witnesses were examined as P.W.1 to P.W.7 and 6 documents were Exhibited as P.1 to P.6.

4. Out of the said witnesses, P.W.1 [Arunlalgiri] is the victim in this case. He has spoken about the occurrence as on 14.05.2009 at about 12.00 noon, when he was driven his Motorcycle near Murugan Temple at Vengathur, the appellants and one more accused intercepted and thereafter, abused him by referring his caste name. Further, he has stated that during the time of occurrence, the other accused in this case and one Kumar by using the wooden log attacked him on his left ear. According to him, P.W.3, P.W.4, one Karpaga Raj and Ramalingam are the witnesses to the occurrence. He has further deposed that, after the occurrence, he rushed to the Kedhar Police Station and lodged a complaint.

5. P.W.2 [Rajendra Doss] is the then Tahsildar, Thirukovilur. He has spoken about the issuance of the Community Certificate to P.W.1 and to all the accused. According to him, P.W.1 belongs to Hindu Adi Dravidar and the accused participated in the occurrence are all belong to Hindu Vanniar.

6. P.W.3 [Ilandhavan] and P.W.4 [Irusan] are the witnesses to the occurrence. They have stated before the trial Court that at the time of occurrence, the first accused / Dhanasekar assaulted the P.W.1 on his cheek, further they have stated that the third accused / Rasaiyan (now acquitted) and the second accused / Paneerselvam by using the wooden log assaulted the P.W.1 on his left ear. Further, P.W.4 has specifically stated that all the accused abuses the P.W.1 by mentioning his caste name.

7. P.W.5 [Saravanan] is the resident of Vengathur Village. He has spoken about the preparation of Observation Mahazar and Rough Sketch by the Investigation Officer.

8. P.W.6 [Dr.Manivannan] deposed that P.W.1 sustained 3 injuries, in which, injury nos.1 and 2 are simple in nature and injury no.3 is grievous in nature.

9. P.W.7 [Rajendran] is the then Deputy Superintendent of Police, Chenji, has stated about the details of investigation and filing of Final Report.

10. With reference to the incriminating materials adduced against the appellants, they were examined under Section 313 Cr.P.C. for which, they denied the same as false. However, they did not choose to examine any witnesses nor marked any documents on their side.

11. Having considered all the above, the trial Court convicted the accused as stated in the first paragraph of the judgment. Challenging the same, the appellants are before this

Court with the present Criminal Appeal.

12. Heard Mr.M.Gnanamoorthy, learned counsel appearing on behalf of the appellants/A-1 & A-2 and Mr.G.Ramar, learned Government Advocate (Criminal Side) appearing on behalf of the respondent and perused the records carefully.

13. The learned counsel appearing for the appellants would contend that, during the time of investigation, the Investigation Officer in this case without following the procedure mandated under Rule 7 of the SC/ST Act, conducted the investigation and filed a Final Report, which is against the legal principles. In this regard, he relied upon the judgment of this Court delivered in Criminal Appeal No.1076 of 2007 dated 16.02.2016. In the said judgment, this Court has observed as follows:-

"32. Now considering the above Rule position and the decisions on the point, there cannot be quarrel over the proposition that it is not at all the D.S.Ps. Even Police Officers above him in rank cannot investigate the offences alleged to have been committed under SC & ST (P.A) Act, 1989 unless they are specifically empowered by the Government or by the Superintendent of Police (in case of Metropolitan Cities, the Deputy Commissioner) taking into account their past experience and sense of ability etc."

Further, in para No.17 it was held as follows:

"17. Now, in the instant case, as per the rule framed under SC/ST (PA) Act, the investigation has to be done by a DSP, who should be Specified in the Rules. It cannot be a matter of oral instructions. There must be a written order passed under the Rules framed under the SC/ST (PA) Act specifically empowering the DSP. The DSP has to state in chief examination that he has been so empowered. But in this case, he did not say so. Further during his cross examination, he was specifically asked whether he was so empowered. But, the prosecution could not establish the same. No records to show that he has been so empowered. In the circumstances, the principles laid down by this Court squarely applies to this case. Thus, the prosecution under Section 3(i)(x) Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, vitiates."

14. So, applying the principles already set out by this Court, in this case also the proceedings issued by the Superintendent of Police to P.W.7 for investigating this case is not exhibited. In the course of trial proceedings, on the side of the accused, it was suggested as P.W.7 is not authorized by the Superintendent of Police for investigating this case. In the said circumstances, producing the order passed by the Superintendent of Police is very much necessary to know the competence of P.W.7. Even though, the Investigation Officer has stated in his evidence as, he was authorized for conducting investigation in this case. The non-production of the proceedings issued by the Superintendent of Police, create a doubt as to whether the Investigation Officer is a competent person to investigate the case or not.

15. Accordingly, in respect to the offence under Section 3(1)(x) SC/ST Act, the non-production of authorization given to P.W.7 is against 7(1) of SC/ST Rule. In the said circumstances, without considering the said aspect, the learned trial Judge convicted the appellants is nothing but erroneous in law.

16. With regard to the conviction and sentence awarded to the appellants under Sections 323 and 506(i) IPC, the learned counsel appearing for the appellants would contend that during the time of getting treatment before P.W.6, P.W.1 has stated that at the time of occurrence, four persons were assaulted him. In the said circumstances, the name of the other person, who involved in the occurrence has also stated by P.W.1 in the complaint itself. But during the time of investigation, the trial was proceeded only against three persons. Further, on the side of the prosecution, no explanation is offered for the deletion of accused Kumar in this case, which shows P.W.7 conducted investigation partially against 3 persons and thereby, the conviction and sentence imposed upon the appellants are liable to set aside.

17. On considering the said arguments with the factual aspects of this case, it is true that in the complaint P.W.1 made an allegation against four persons, but after completing investigation, the case was proceeded only against three persons, including the present appellants/A-1 and A-2. In this regard, before the Doctor P.W.1 had mentioned that 4 persons were participated in the occurrence. Moreover, at the time of giving evidence before the trial Court as P.W.1, he has specifically stated that, apart from the appellants other two persons were assaulted him. Even after recording the said evidence, the trial Court has not taken any steps to implead the said Kumar.

18. In this regard, it is to be noted that as per the charge, during the time of occurrence, the present appellants, after uttering the caste name, assaulted the P.W.1 by using the wooden log on his cheek and caused simple injury. But as per the evidence of P.W.3 and P.W.4, at the time of occurrence, the second accused herein alone by using the wooden log assaulted the P.W.1 and caused simple injury. So, in respect to the assault made by the appellants, two set of evidences are let in by the prosecution witnesses and the same is nothing but fatal to the prosecution. The evidence given by P.W.1 before the trial Court is at the time of occurrence, one Kumar joined with other accused and assaulted him. But in respect to the presence of Kumar, P.W.3 and P.W.4 has not stated anything as the said Kumar is also present and assaulted the P.W.1. So, in respect to number of persons participated in the occurrence is not projected clearly on the side of the prosecution. Accordingly, I am not in a position to ascertain as, which person is responsible for causing injury to P.W.1.

19. In the light of the above discussion, this Court finds that the prosecution has abruptly and lethargically proceeded the trial and disposed of this case. The lapses found in the evidence given by P.W.1, P.W.3 and P.W.4 will create a doubt whether the appellants were committed the offence, as stated by the prosecution or not. So, without any hesitation, I hold that the charge framed against the appellants under Sections 323, 506(i) IPC and Section 3(1)(x) of SC/ST Act had not been proved beyond reasonable doubt. The trial Court has not considered the said issue in perspective manner and convicted the appellants, which is liable to be set aside.

20. In view of the aforesaid reasons, this Criminal Appeal is allowed. The conviction and sentence imposed upon the appellants / A-1 and A-2 by the learned Special Judge-cum-Principal Sessions Judge, Villupuram, in S.C.No.301 of 2009 dated 06.10.2010, is set aside. The accused are acquitted of the charges. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Sri

To

1.The Special Judge-cum-Principal Sessions Judge,
Villupuram.

2.The Deputy Superintendent of Police,
Gingee, Kedar Police Station,
Villupuram District.
(Crime No. 61/2009)

3.The Section Officer,
Criminal Section,
Madras High Court,
Chennai.

4.The Judicial Magistrate No.2,
Villupuram.

5.The Chief Judicial Magistrate,
Villupuram.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Suresh, Advocate, S.R.No. 5121

Criminal Appeal No.661 of 2010

PM(CO)
GN(25/02/2020)



WEB COPY