

Bail Slip in Crl.A.No.178/2015:

The Appellants/Accused namely Kumaravel, S/o. Mani(A3) Suresh S/o. Mani (A4) were directed to be released on bail as per order of this Court dated 06.04.2015 made in M.P. No.1/2015 in Crl.A.No.178 of 2015.

Bail Slip in Crl.A.No.146/2015:

The Appellants/Accused namely Loganathan, S/o. Mariappan(A1) Krishnamurthy S/o. Sekar(A2) were directed to be released on bail as per order of this Court dated 17.03.2015 made in M.P. 1/2015 in Crl.A.No.146/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	07.12.2020
PRONOUNCED ON	22.12.2020

CORAM :
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.Nos.178 & 146 of 2015

1.Kumaravel
2.Suresh

... Appellants in Crl.A.No.178 of 2015

1.Loganathan
2.Krishnamurthy

... Appellants in Crl.A.No.146 of 2015

Vs

State represented by:
The Deputy Superintendent of Police,
Mettur,
(Karumalai Kadal Police Station
Crime No.186 of 2010)

... Respondent in both the appeals

COMMON PRAYER: Criminal Appeals filed under Section 374 (2) of Criminal Procedure Code praying to set aside the Judgment dated 18.02.2015 in S.C.No.113 of 2013, passed by the Principal Sessions Court, Salem.

For Appellants
in both the appeals : Mr.M.G.Udayashankar.

For Respondent
in both the appeals : Mr.S.Karthikeyan,
Additional Public Prosecutor

C O M M O N J U D G M E N T

The present Criminal Appeals have been filed to set aside the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Salem dated 18.02.2015 in S.C.No.113 of 2013.

2.The appellants in CrI.A.No.146 of 2015 are arrayed as A1 & A2 and the appellants in CrI.A.No.178 of 2015 are arrayed as A3 & A4 in S.C.No.113 of 2013. Since both the appeals have been filed against the Judgment rendered in S.C.No.113 of 2013, both the appeals are taken together for consideration and the following common Judgment is pronounced.

3.By Judgment dated 18.02.2015, the learned Principal Sessions Judge convicted the accused 1, 2 and 3 under Section 341 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for a period of one week, further convicted under Section 294 (b) of Indian Penal Code and sentenced to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of one week. More than that, all the accused are convicted under Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of one month. Further, accused 1, 2 and 4 have been convicted under Section 324 of Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of one month and further, the third accused was convicted under Section 323 of Indian Penal Code and sentenced to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for a period of one week.

4.Challenging the said conviction and sentence, the appellants / accused are before this Court by filing the present Criminal Appeals.

5.The case of the prosecution in nutshell is as follows:

(i)PW1, Murali is the defacto complainant as well as the victim in this case. He was residing in R.S.Ramamoorthy Nagar, Mettur. PW1 and the witnesses examined on the side of prosecution belongs to Scheduled Caste. On the other hand, the accused persons belongs to Vanniyar community. On 07.09.2010, at about 4.30 P.M., when PW1 was returning from RTO office, at R.S.Vaitheeswara Bus stop, Ramamoorthy junction, due to previous enmity, the accused 1 to 3 waylaid the PW1 and abused as "பறக்கண்டார ஒழி பையா". In the course of same transaction, the first accused herein in order to facilitate to attack the PW1 caught

hold the hands of PW1 and thereby, the second accused by using soda bottle attacked PW1 on his forehead and the third accused assaulted PW1 in his face and the fourth accused by using road paving gravel, attacked PW1. Due to the said attack, PW1 sustained injuries and on hearing the cue and cry of PW1, PW2 and PW3 came there and on seeing them, all the accused ran away from the scene of occurrence. Immediately, PW2 informed the occurrence to the father in law of PW1 and thereafter he admitted the PW1 in hospital.

(ii) On admission, PW5, Dr. Ravi, on 07.09.2010 at about 06.30 P.M., examined PW1 and found a laceration wound on head in 3 x 1 cm x 1 cm size and abrasion below the right eye and stated that the said injuries are simple in nature. He issued a copy of accident register under Ex.P.3. In the meantime, on 08.09.2010, PW7, Chellaveeran, the then Special Sub Inspector of Police, Karumalai Koodal Police Station received the information from Government Hospital, Mettur. He went there and recorded the complaint given by PW1 under Ex.P.1 and thereafter, on the strength of the same, he registered the First Information Report under Ex.P.9 in Crime No.186 of 2010 under Sections 341, 294(b) and 324 of Indian Penal Code read with Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The endorsement made in the complaint has been marked as Ex.P.10. Immediately, after the registration of the First Information Report, he forwarded the same to the Superintendent of Police, Salem District for further proceedings. In this regard, the Superintendent of Police issued proceedings under Ex.P.11, wherein, he nominated the Deputy Superintendent of Police to investigate this case.

(iii) On receipt of the said proceedings, PW8, Sivanantham, the then Deputy Superintendent of Police, Mettur on 08.09.2010 at about 10 P.M., visited the scene of occurrence and prepared observation mahazar and rough sketch in the presence of PW4, Sridhar and one Sumanraj under Ex.P.2 and Ex.P.12 respectively. He examined the witnesses and recorded their statements. On the same day, at about 6.00 P.M., he arrested all the accused and remanded them to the judicial custody. He gave requisition to the Tahsildar for issuing community certificate to the accused persons as well as to the defacto complainant. On receipt of the requisition, PW6, Subramani, the then Tahsildar, Mettur issued certificate, certifying that PW1 belongs to 'Hindu - Paraiyan' recognized as Scheduled Caste. Further he issued certificate as all the accused belongs to 'Hindu - Vanniyar'. Thereafter, since PW8 was transferred from the post of Deputy Superintendent of Police, he handed over the case records to PW9, Muniyappan, the then Deputy Superintendent of Police. On receipt of the same, PW9 completed the investigation and filed final report against the accused persons.

6. Based on the above materials, the learned Principal Sessions Judge, Principal Sessions Court, Salem took the case on file in S.C.No.113 of 2013 and framed charges against the appellants under Sections 341, 294(b), 323 and 324 of Indian Penal Code and under Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. All the accused denied the same and opted for trial. In order to prove their case, on the side of the prosecution, as many as nine witnesses have been examined as PW1 to PW9 and 12 documents were marked as Ex.P.1 to Ex.P.12.

7. Out of the said witnesses, PW1, Murali who is the victim in this case, speaks about the occurrence stating that on 07.09.2010 at about 10 A.M., when he was returning from RTO office at R.S.Vaitheeswara Bus stop, Ramamoorthy junction, due to previous enmity, the accused 1 to 3 waylaid him and made insult by using caste name as "gwf;fz;lhu XHp igah". Further, A1 caught hold his two hands and thereafter, second accused by using soda bottle attacked him on his forehead, the third and fourth accused also attacked him on his face and forehead.

8. PW2 and PW3 viz., Maharajan and Saravanan are the residents of R.S.Ramamoorthy nagar where PW1 was residing. They deposed the occurrence as stated by PW1 with complete corroboration. PW4, Sridhar speaks about the preparation of observation mahazar and rough sketch by the investigation officer. PW5, Dr.Ravi, attached with Government Hospital, Mettur has deposed that on 07.09.2020 at about 4.30 P.M., he examined PW1 and found the injuries sustained by PW1.

9. PW6, Subramani, the then Tahsildar, Mettur stated about the issuance of community certificate to PW1 and to the accused 1 to 4. PW7, Chellaveeran, the then Special Sub Inspector of Police, Karumalai Koodal Police Station speaks about the information received from hospital, about the complaint recorded from PW1 and also about the registration of the case.

10. PW8 and PW9 viz., Sivanandham and Muniyappan, the Deputy Superintendents of Police speaks about the examination of witnesses and recording their statements, receipt of community certificates from PW6 and about the filing of final report against the accused.

11. When the above incriminating evidence, were put to the appellants / accused under Section 313 of Criminal Procedure Code, they denied the same as false. However, in order to prove their case, they neither produced witnesses on their side nor marked any documents. Thereafter, the learned Principal Sessions Judge, after considering all the material documents and

on considering the arguments put forth by either sides, convicted the appellants / accused as stated supra. Aggrieved by the said conviction and sentence, the appellants / accused are before this Court.

12.I have heard Mr.M.G.Udayashankar, learned Counsel appearing for the appellants in both the appeals and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondent in both the appeals.

13.The learned Counsel appearing for the appellants would contend that the evidence given by the prosecution witnesses are having lot of contradictions. The evidence put forth by PW2 and PW3 creates doubt as to whether they were present during the time of occurrence in the said place. Further, in respect of the offence under Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, there was no evidence from A2 and A3. But the trial Court, without considering the same, convicted the accused persons which is erroneous in law. He prayed to allow both the appeals and to set aside the Judgment of conviction and sentence.

14.On the other hand, the learned Additional Public Prosecutor appearing for the respondent would contend that the evidence given by PW1 to PW3 and PW6 clearly establishes the case of prosecution that during the relevant point of time, accused herein insulted the PW1 by saying the caste name. Further, he submits that evidence given by PW1 is cogent, in respect to the injuries sustained by him and therefore, interference of this Court is not necessary in the Judgment rendered by the trial Court.

15.I have considered the rival submissions made on either side and carefully perused the materials available on record.

16.Before the trial Court, the community certificate issued to PW1, and to the accused 1 to 4 have been marked as Ex.P.4 to Ex.P.8 respectively. As per the said certificates, PW1 belongs 'Hindu - Paraiyan' which is recognized as Schedule Caste and the accused 1 to 4 belongs to 'Hindu - Vanniyar'. In respect of issuing of certificates, PW6 stated in his evidence that at the request given by PW8, the said certificates were issued. The said evidence given by PW6 is not disputed on the side of the accused. Further, in respect to the said finding, there was also no denial on the side of the accused and accordingly, the prosecution proved that PW1 belongs to Scheduled Caste and the accused persons belong to Non Scheduled Caste.

17.Secondly, the complaint given by PW1 before the police officer was marked as Ex.P.1. The averments found in the

complaint was clearly narrated by PW1 during the time of giving evidence before the trial Court. More than that, evidence given by PW2 and PW3 corroborates the evidence given by PW1. Accordingly, the evidence given by PW1 to PW3 categorically proved that during the time of occurrence, all the accused insulted the PW1 by using his caste name. Further, during the time of occurrence, all the accused waylaid him and thereafter, A2 to A4 attacked PW1 by using deadly weapons, resultantly, caused simple injuries to the PW1. In this regard, evidence given by the doctor who treated PW1 is also in correspondence with the evidence given by PW1.

18. In the said circumstances, the learned Counsel appearing for the appellants would contend that in respect of occurrence place, witnesses examined on the side of prosecution is vary and not in accordance with observation mahazar and rough sketch prepared by the investigation officer. According to him, the said contradiction arises in the evidence of Prosecution creates doubt as to whether the occurrence has happened as stated by the prosecution.

19. Upon considering the same with relevant records, it is seen that PW1 gave evidence as the occurrence had happened in front of Deepam Photos Studio. On the other hand, in Ex.P.12 rough sketch prepared by the investigation officer, it was mentioned that the occurrence had happened in bus stop. On close reading of the said evidence, it seems as per the rough sketch, the said Deepam Photos Studio is situated 50 feet away from the bus stop. Accordingly, in respect to the occurrence place, there was some contradiction found in the evidence given by the prosecution witnesses.

20. At this juncture, it is relevant to see the Judgment of our Hon'ble Apex Court in the case of "Sunil Kumar Sambhudayal Gupta -vs- State of Maharashtra" reported in "(2010) 13 SCC 657" wherein it is held as follows:

"While appreciating the evidence, the Court has to take into consideration whether the contradictions/omissions had been of such magnitude that they may materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements on trivial matters without effecting the core of the prosecutions case should not be made a ground to reject the evidence in its entirety. It is further held that when the trial Court after going through the entire evidence had formed an opinion about the credibility of the witnesses, the appellate Court in normal course would not be justified in reviewing the same again without justifiable reasons".

21. Applying the ratio laid down in the above referred Judgment, it is made clear that only because of the reason viz., suppression of occurrence place alone, is not sufficient to hold that the case of prosecution is false one. In fact, in this case, since the evidence given by the eye witness to the occurrence is tallied with the medical evidence, the same inspired the confidence of this Court. Therefore, the variations in the place of occurrence alone is not sufficient to disbelieve the case of the prosecution and also the same is not in the form which creates a material contradiction.

22. Secondly, in respect of the investigation, the learned Counsel for the appellants would contend that according to the evidence given by PW7 who registered the case, it is seen that the case has been registered on 08.09.2010 at 9 A.M. and only on 08.09.2010, the Superintendent of Police issued proceedings to PW8 for conducting investigation in this case. Now in the said circumstances, PW4, Sridhar who attested in the observation mahazar, has stated that on 07.09.2010 itself, the investigation officer prepared observation mahazar in the occurrence place. Therefore, culling out the entire evidence, it would disclose the fact that before registering the case, that too without getting permission for investigation, PW8 prepared observation mahazar and the same is fatal to prosecution.

23. Now on considering the same, it is true that the Superintendent of Police issued proceedings only on 08.09.2010 after referring the request given by police attached with Karumalai Koodal Police Station. In otherwise, on going through the observation mahazar prepared by PW8 which was marked as Ex.P.2, it reveals the fact that the same was prepared on 08.09.2010 and not on 07.09.2010 as stated by PW4. Accordingly, the evidence given by PW4 is no way helpful to the case of the accused.

24. The learned Counsel appearing for the appellants would contend that evidence given PW2 and PW3 is very clear that only after hearing the cue and cry of PW1, they reached the scene of occurrence. Therefore, they cannot be treated as eye witness. He would further add that in the absence of reliable eye witness, believing the evidence of PW1 alone is not sufficient to hold that the entire prosecution case is true one.

25. On considering the said submission with relevant records, it is true PW2 and PW3 in their cross examination gave evidence as only after the occurrence, they went to the place of occurrence. Therefore, they themselves admitted that they have not seen the occurrence.

26. However, it is a settled law that if the solitary testimony of single evidence, inspires the confidence of this Court, it is sufficient to hold that entire occurrence narrated by the prosecution is true one. Ordinarily, evidence of truthful eye witness is sufficient, without anything more to warrant conviction. Only in the cases wherein the evidence of a witness, when it is neither wholly unacceptable nor wholly impeachable, corroboration is essential.

27. But, here, it is a case that the averment found in the complaint, was clearly narrated by the PW1, without any contradiction. Further, the injuries sustained by PW1 is also in accordance with the evidence given by the doctor [PW5] who treated the PW1 and therefore, the evidence given by victim in respect to the injury sustained is corroborated through the medical evidence. In the said circumstances, I am of the considered opinion that evidence of PW1 is wholly reliable and therefore, non production of corroborating evidence is not sufficient to hold that the case of prosecution is false one.

28. In respect of the offence under Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the learned Counsel for the appellants would contend that for proving the said offence, the prosecution must show that, the said occurrence had taken place in any place within public view. But, here, it is the case that in the aspect of public view, for proving the same, none have been examined on the side of the prosecution. Further, the witnesses examined on the side of the prosecution gave evidence that only after the incident, they came to the place of occurrence and therefore, it cannot be said that the said insult made by the first accused is in the vicinity of public view and accordingly, prosecution fails in proving the said offence.

29. On considering the said submission with relevant records, as already observed, PW2 and PW3 have stated in their cross examination that they came to the occurrence place only after hearing the cue and cry of PW1. Therefore, it cannot be said that the accused abused PW1 in front of PW2 and PW3. In otherwise, in the entire evidence given by the PW1, he did not say that the insult committed by the accused was seen by the public.

30. At this juncture, it is necessary to see the Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 which reads as follows:

"3. Punishments for offences of atrocities: (1)

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

(X)intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

Therefore, for proving the said offence, the prosecution has to show necessary proof that the said occurrence had happened within the vicinity of public. But here, it is the case that the evidence given by the witnesses are not in accordance with the same and therefore, the conviction and sentence awarded to the accused 1 to 4 under Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is liable to be set aside.

31.In respect to the other offences, since the evidence given by PW1 is in support of the injuries sustained by him, this Court upholds the conviction rendered by the trial Court. In respect to the quantum of punishment, the learned Counsel for the appellants would contend that the alleged occurrence had happened in the year 2010 and thereafter, for the past ten years, all the accused are facing the trial and therefore, he prayed to show some leniency in the sentence awarded to the appellants. On considering the said submission with relevant records, while at the time of disposing the case, the trial Court convicted the accused for the offence under Sections 341, 294(b), 323, 324 of Indian Penal Code with terms of imprisonment and with fine.

32.In this regard, it is admitted on either side that PW1 sustained only simple injuries. Therefore, convicting the appellants with the term of imprisonment is unwarranted. Therefore, in respect of the sentence awarded to the accused for the offence under the provisions of Indian Penal Code, the fine imposed by the trial Court is confirmed and the imprisonment imposed by the trial Court is set aside.

33.In the result, the appeals are partly allowed. The conviction and sentence imposed on the appellants/accused by the Trial court under Section 3(1)(X) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are set aside. Further, in respect to the imprisonment imposed upon the appellants under Sections 341, 294(b), 323 and 324 of Indian Penal Code are set aside. On the other hand, the fine amount imposed on each of the above said Sections are confirmed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Deputy Superintendent of Police,
Mettur(Karumalai Kadal Police Station)

2.The Principal Sessions Judge,
Principal Sessions Court,
Salem.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

4.The Chief Judicial Magistrate
Salem

5.The Judicial Magistrate No.II
Salem

6.The Director General of Police
Chennai 4.

7.The District Collector
Chennai

+2 Ccs to Mr.M.G.Udayashankar, Advocate sr 42561, 42560.

Cr1.A.Nos.178 & 146 of 2015

LN(CO)
SP(18/01/2021)



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