

**BAIL SLIP**

Thannakutti, S/o. Muthaiyah, Appellant / Accused No.1 is released on Bail vide court order dated 25.11.2015 made in MP(MD) No.1 of 2015 in Crl A(MD)No.351 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI**Crl.A(MD)No.351 of 2015**

1.Thannakutti

2.Packiyalakshmi

... Appellants /Accused Nos.1 & 2
Vs.

1.State represented by

The Deputy Superintendent of Police,
Oomatchikulam, Madurai District.
[Crime No.46 of 2010]2.The Inspector of Police,
Silaiman Police Station,
Madurai.

... Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the order passed by the III Additional District and Sessions Court (PCR), Madurai in Spl.S.C.No.26 of 2012, dated 05.11.2015.

For Appellant : Mr.V.Kannan

For Respondents : Mr.A.Robinson

Government Advocate (Crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellants in Spl.S.C.No.26 of 2012 by the learned III Additional District and Sessions Court [PCR] Madurai, dated 05.11.2015.

2.The appellants stood charged for the offence under Sections 354, 355 and 506 (I) IPC and Section 391(x) of SC/ST (POA) Act, 1989. In conclusion of the trial, the trial Court found them guilty, convicted and sentenced them as follows:

Accused	Section of Law	Sentence of imprisonment	Fine amount
Accused No.1	355 I.P.C.	To undergo rigorous imprisonment for one year	Rs.2000/- in default to undergo simple imprisonment for one month.
Accused No.2	506(I) IPC	--	Fine of Rs.500/-, in default to undergo simple imprisonment for one month.



Aggrieved over the same, the present appeal is filed by the appellants/accused.

3.The case of the prosecution in brief is as follows:

The appellants/accused are husband and wife and they are residents of Sunnabmur Village and they belong to Hindu Kallar community. They were running a petty shop in front of St.Michael Engineering College at Poovanthi. The defacto complainant namely Bose belongs to the Scheduled Caste and he was the President of Sunnambur Village Panchayat. 10.12.2009 at about 10.00 am, while the defacto complainant was talking with the Correspondent near the entrance of the said college, the first appellant attacked the defacto complainant with Cheppal. At that time, the second appellant intimidated him in filthy language by using his caste name. Therefore, the defacto complainant lodged a complaint before the respondent Police on 07.02.2010 and the same was registered in Crime No.46 of 2010 for the offence under Section 355, 323 and 506(I) IPC r/w Section 3(1)(x) of SC/ST [POA], 1989. After investigation, the respondent filed a final report before the learned Judicial Magistrate No.II in PRC No.56 of 2010 and it was committed to the Court of Sessions and tried by the III Additional District and Sessions Judge, Madurai.

4.During the trial, on the side of the prosecution, 13 witnesses were examined and six documents were produced. When the incriminating materials were put to the accused, they denied the same. On the side of the accused, no witness was examined and no document was marked.

5.In conclusion of the trial, the trial court found the appellants guilty, convicted and sentenced them as stated supra. Aggrieved over the same, the present criminal appeal is filed.

6.When the appeal is taken up for hearing the learned Counsel for the appellants submitted that pending this appeal, the first appellant /accused No.1, Thannakutti died on 19.09.2017 and therefore, the appeal as against the first appellant may be dismissed as abated.

7.Insofar as the second appellant/second accused is concerned, according to the learned Counsel for the appellant, she was found guilty and sentenced to pay a sum of Rs.500/- for the offence under Section 506(I) IPC. The allegations as against this accused No.2 is that she has also intimidated and assaulted the victim on the date of occurrence. But, there is no averment in the FIR as against this appellant, so as to attract the offence under Section 506(I) IPC. Further, the trial Court has also observed that there are discrepancies between the complaint and the evidence of the complainant. Therefore, when the trial Court found discrepancies, it ought not to have convicted the second appellant.



8.The learned Counsel for the appellant also relied upon a decision of this Court in **Noble Mohandass Vs State by Deputy Inspector of Police**, reported in **1989 CRL LJ 669**, wherein this Court has held as follows:

"7.As far as the offence under Section 506(2) is concerned, the learned Counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words, which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4, who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws.3 and 4 came to the place and separated both the husband and the wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. Further, for being an offence under Section 506 (2), which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word, when the person uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. If fact, P.W.1, when she filed the complaint to the Police Officer, did not express any fear any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out."

Therefore, the learned Counsel for the appellant prayed for setting aside the conviction and sentence as against the second respondent.

9.Mr.A.Robinson, learned Government Advocate (Crl Side) appearing for the State also confirmed that the first appellant died on 19.09.2017 pending this appeal and produced a copy of the death certificate of the appellant No.1/accused No.1. He further submitted that the prosecution has proved its case through the evidence and the trial Court has rightly convicted them. Therefore, he prays for dismissal.

10.Heard Mr.V.Kannan, learned Counsel for the appellants/accused and Mr.A.Robinson, learned Government Advocate (Crl Side) appearing for the State.



11.A perusal of the record shows that pending this appeal, the first appellant / first accused died on 19.09.2017 and therefore, the appeal is dismissed as abated insofar as the first appellant is concerned.

12.It is the contention of the learned Counsel for the appellants that there is no averment in the complaint about the alleged intimidation by the second appellant and only during the trial, the complainant has exaggerated the fact and deposed that she had also intimidated and assaulted him. Therefore, the evidence of PW1 cannot be sustained.

13.Admittedly, the trial Court has found some discrepancies between the complaint [ExP1] and the evidence of the complainant/victim [PW1] with regard to the intimidation and the assault by the second appellant to the defacto complainant. Moreover, for attracting an offence under Section 506(I) IPC, one should have felt the intimidation. In this case, it is alleged that the intimidation was made on 10.12.2009, whereas the complaint was lodged on 07.02.2010, nearly after two months. Therefore, it cannot be termed that the complainant felt the intimidation alleged to have been made by the second appellant. While so, this Court feels, it may not be safe to sustain the conviction on the second appellant, based on the evidence of PW1.

14.Considering the available materials and also considering the decision of this Court cited supra, the conviction and sentence imposed on the second appellant / second accused in Spl.S.C.No.26 of 2012 dated 05.11.2015 on the file of the learned III Additional and District Sessions Court, is set aside and the appeal is allowed insofar as the second appellant is concerned and she is acquitted of the charge framed against her. The fine amount, if any paid by her, shall be refunded.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

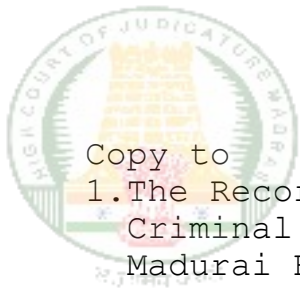
dsk

To

1.The III Additional District and Sessions Court (PCR),
Madurai.

2.The Deputy Superintendent of Police,
Oomatchikulam, Madurai District.

3.The Inspector of Police, Silaiman Police Station, Madurai.



Copy to

1.The Record Keeper (2 copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

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

Crl.A(MD)No.351 of 2015

21.07.2020

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