



BAIL SLIP

Appellant / Sole Accused namely Andi kannan, S/o. Ramasamy was released on bail as per the order of this Court dated 12/02/2015 made in MP(MD)No.1 of 2015 in Crl A(MD)No.41 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.A.[MD]No.41 of 2015

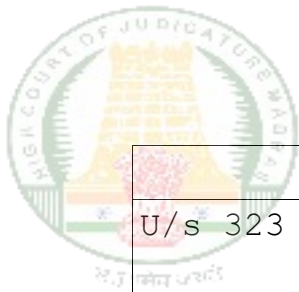
Andi Kannan : Appellant/Sole Accused
Vs.
State,
represented by the Inspector of Police,
Narikudi Police Station,
Narikudi,
Virudhunagar District.
(Crime No.184 of 2007) : Respondent/Complainant

PRAYER: Criminal Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to call for the records pertaining to the judgment of conviction passed by the Learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur in S.C.No.10 of 2009 dated 29.01.2015 and set aside the same and allow the appeal and consequently acquit the appellant.

For Appellant : Mr.A.Joseph Jerry
for Mr.P.Surli Raja
For Respondent : Mrs.S.Bharathi
Government Advocate (Criminal side)

JUDGMENT

The appellant herein, who is arrayed as the sole accused was charged and tried before the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, in S.C.No.10 of 2009, for the offence u/s 324 and 376 IPC r/w. Sections 3(1)(xi), 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 [hereinafter referred to as the 'SC/ST (PoA) Act']. The trial court vide the impugned judgment dated 29.01.2015, convicted and sentenced the appellant as under :-



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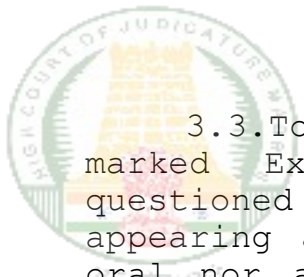
Section	Sentence
U/s 323 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of six [6] months.
U/s 354 IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of eighteen [18] months.
U/s 3(1)(xi) of SC/ST (PoA) Act	Convicted and sentenced to undergo rigorous imprisonment for a period of six [6] months.

2.The sentence of imprisonment were ordered to run concurrently. The appellant, aggrieved by the conviction and sentence awarded by the trial court vide the impugned judgment referred supra, has filed the present appeal challenging its sustainability. For the sake of convenience, the appellant will be referred to as the accused.

3.The brief facts necessary for the disposal of this appeal could be stated as under :-

3.1.On 15.12.2007, at around 05.00 p.m., when P.W.1 was returning from her agricultural land, the accused enquired about way to the nearby village. All of a sudden, the accused caught hold of the hands of the P.W.1 and is said to have abused her. The accused is also said to have bite the cheek of P.W.1. Thereafter, when P.W.1. raised alarm, P.W.3 came to rescue her and on seeing P.W.3, the accused hurriedly left the scene of occurrence along with his bike. Thereafter, P.W.1 was taken to her village by P.W.3 and then, a complaint was lodged before the law enforcing agency. On the basis of Ex.P-1, given by P.W.1, a case in Crime No.184/07 was registered by preparing FIR, Ex.P-4, and the criminal machinery was set in motion by the law enforcing agency visiting the scene of occurrence and preparing the observation mahazar, Ex.P-3 and drawing the rough sketch, Ex.P-2. The accused was placed under arrest and the case properties along with the accused were produced before the Judicial Magistrate, Aruppukkottai. On completion of investigation, a final report was filed against the accused for the offence u/s 324 and 376 IPC r/w. Sections 3(1)(xi), 3(2)(v) of the SC/ST (PoA) Act.

3.2.The accused was furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed to the Principal District and Sessions Judge, Virudhunagar at Srivilliputhur, for trial after framing charges u/s 324 and 376 IPC r/w. Sections 3(1)(xi), 3(2)(v) of the SC/ST (PoA) Act. When questioned, the accused pleaded not guilty.

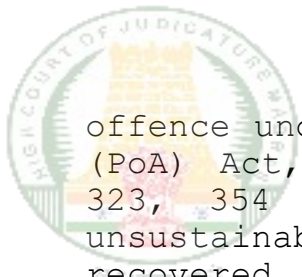


3.3.To prove the case, the prosecution examined P.W.s 1 to 18, marked Exs.P-1 to P-19 and M.O.s 1 and 2. When the accused was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same as false. Neither any oral nor any documentary evidence was marked on the side of the defence. The trial court, after hearing either side and after considering the materials, both oral and documentary, on record, convicted and sentenced the accused as above, aggrieved by which the present appeal has been filed by the appellant.

4.Mr.A.Joseph Jerry, learned Counsel for the accused submitted that the case of the prosecution bristles with infirmities and inconsistencies, which have not been appreciated by the trial court and, therefore, the conviction recorded by the trial court deserves a reversal. The learned Counsel would submit that though the said occurrence took place at about 05.00 p.m. on 15.12.2007, the complaint was given only at 08.00 a.m. on 16.12.2007. P.W.1, in her evidence has clearly deposed that she do not know the accused. However she deposed that on enquiry, she came to know the name and address of the accused. The learned Counsel would submit that the complaint Ex.P.1 is contrary to the evidence of P.W.1 for the main reason that P.W.1 did not reveal as to how, she came to know about the identification of the accused overnight. Therefore, in the absence of corroboration between Ex.P.1 and the evidence of P.W.1, it would be wholly unsafe to rely upon the testimony of P.W.1, to convict the appellant.

5.It is the further submission of the learned Counsel for the accused that the injury suffered by P.W.1 is only a lacerated wound, which could in no way be said to be grievous injury and the said fact has been spoken to by the doctors P.Ws.2 and 12. Therefore, the theory of the prosecution that the injury was caused by the accused biting the left cheek of P.W.1 is doubtful. Further, the evidence of P.W.3 makes it clear that P.W.1 and P.W.3 was not aware of the accused person at the relevant point of time. P.W.3 clearly deposed that he noted the bike number of the accused in mud and thereafter, he borrowed pen from an unknown person and written it in a white sheet and handed over to P.W.4. However, he did not disclose from whom he collected pen in the evidence as well as in his statement. P.Ws.4 and 5 are local persons who were not eye-witnesses and even P.Ws.3 to 5 did not reveal as to how they identified the accused person overnight. In such circumstances, placing reliance upon the testimonies of P.Ws.1, 3 to 5, to convict the appellant would be totally unsafe and, therefore, sought for interference with the conviction recorded by the court below.

6.It is the further submission of the learned Counsel for the accused that the law enforcing agency registered a case for the offence under the SC/ST Act, though the complaint itself does not speak about the same. Though the accused has been acquitted for the



offence under Sections 324, 376 of IPC and Section 3(2)(v) of SC/ST (PoA) Act, convicting the accused for the offence under Sections 323, 354 IPC and Section 3(1)(xi) of SC/ST (PoA) Act is an unsustainable one. Further, though the law enforcing agency recovered the dress wore by P.W.1, however, no semen traces were identified in the cloth wore by P.W.1. However, they identified blood stain. It is his further contention that except P.Ws.1 and 3, all other witnesses are hearsay witnesses. Hence, the learned Counsel prays for allowing this appeal.

7.Per contra, Mrs.S.Bharathi, learned Government Advocate (Crl. Side), appearing for the respondent submitted that this Court can very well rely on the testimonies of P.Ws. 1 & 3, which corroborate with each other. Further, coupled with the evidence of the doctors, P.Ws.2 & 12, who had issued Exs.P-2 & 6, clearly reveal that there are chances that the injuries have been sustained by P.W.1 in the manner as projected by the prosecution, which has been appreciated by the trial court to arrive at a just and reasonable finding. Though the accused has been rightly acquitted by the trial Court for the offence under Sections 324, 376 of IPC and Section 3(2)(v) of SC/ST (PoA) Act, the conviction for the offence under Sections 323, 354 IPC and Section 3(1)(xi) of SC/ST (PoA) Act is legally sustainable and the said conviction is based on impeccable evidence of prosecution. Therefore, no interference is warranted with the well considered judgment recorded by the trial court.

8.This Court paid its undivided attention to the submissions advanced by the learned counsel for the parties and also perused the materials available on record to which this Court's attention was drawn.

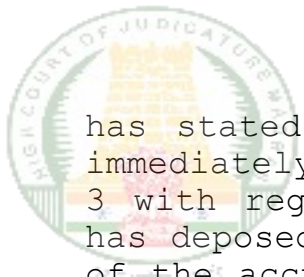
9.The issues arising for consideration are as follows:

"i) Whether the evidence of P.W.1 and P.W.3 are corroborative in nature?

ii) Whether the conviction under Sections 323 and 354 IPC and 3(1)(xi) of SC/ST Act is established before the trial Court?"

10.It is evident from the materials available on record that the alleged occurrence had taken place during dawn. True it is that the persons who have been examined by the prosecution as witnesses, viz., P.W.s 4 and 5, are hearsay witnesses. Therefore, the evidence left before the Court is only that of P.Ws. 1 & 3, with regard to the occurrence.

11.P.W.3 has deposed that he witnessed the accused hurriedly leaving the scene of occurrence in the opposite direction when P.W.3 was proceeding towards the scene of occurrence. However, he deposed that he ignored the accused in order to save P.W.1. Whereas, P.W.1



has stated in her evidence that P.W.3 tried to catch the accused immediately after the occurrence. Thus, the statements of P.Ws.1 and 3 with regard to this aspect is not corroborative. Further, P.W.3 has deposed in his evidence that he noted the number of the vehicle of the accused in mud and then borrowed pen from a person and then wrote it in a paper and gave it to P.Ws.4 and 5. However, P.W.3 did not disclose the name of the person who has given pen to him. Moreover, the vehicle has not been secured by the prosecution. Further, P.W.1 and P.W.3 in their evidence clearly deposed that they were initially unaware of the accused but at a later point of time they came to know about the accused. However, there is no explanation as to how they identified the accused overnight.

12.Further, P.W.1 sustained injuries at 05.00 p.m. on 15.12.2007. However, she had given a complaint only the next day morning at around 08.00 a.m. and thereafter she has taken treatment only at 03.40 p.m. on 16.12.2007. Further, the doctors who examined P.W.1, namely P.Ws.2 and 12 clearly deposed that the teeth impressions of the accused are not found in the cheek of P.W.1 and no semen traces were collected from M.Os.16 and 17, which are dress materials. Further the prosecution miserably failed to prove in respect of offence under Section 3(1)(xi) of SC/ST Act with proper materials, further Ex.P.1 complaint and evidence of P.W.1. is not corroborative with each other. No other corroborative evidence adduced before the lower Court. Hence, conviction of the trial Court is required to be reconsidered and to be interfered with. Hence, the prosecution has miserably failed to prove the prosecution case. Hence, the order of the trial Court is liable to be interfered with.

13.Though the trial Court rightly acquitted the accused for the offences under Sections 324, 376 of IPC and Section 3(2)(v) of SC/ST (PoA) Act, however convicted him for the offences under Sections 323, 354 IPC and Section 3(1)(xi) of SC/ST (PoA) Act. The prosecution has not established the case in respect of the offence under Section 354 and 323 IPC. The identification of the person is not established and the allegations in respect of Sections 323 and 354 are also not established.

14.For the reasons aforesaid, this appeal is allowed acquitting the appellant by setting aside the conviction and sentence recorded by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur in S.C.No.10 of 2009 dated 29.01.2015. Fine amounts, if any, paid by the appellant shall stand refunded to him. Bail bonds executed shall stand cancelled.

Sd/-

Assistant Registrar (Crl Side)

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/ /2020

Sub Assistant Registrar(CS)



To

1.The Principal District and Sessions Judge,
Virudhunagar at Srivilliputhur.

2.The Inspector of Police,
Narikudi Police Station,
Narikudi,
Virudhunagar District.

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

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

5.The Judicial Magistrate,
Aruppukottai.

6.-Do-Through The Chief Judicial Magistrate,
Virudhunagar @ Srivilliputhur

7.The Superintendent,
Central Prison, Madurai

+1 CC to M/s.P.SURULIRAJA, Advocate (SR-9554[F] dated 02/03/2020)

CRL.A. [MD]No.41 of 2015
02.03.2020

KK(24.06.2020) 6P 10C