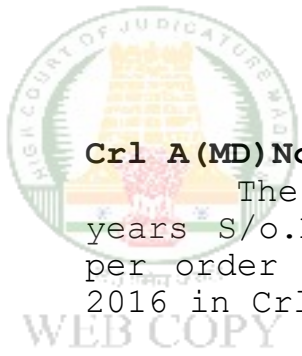




BAIL SLIP

Crl A(MD)No.280 of 2016

The Appellant/Accused namely M.Jeyaprakash, aged about 54 years S/o.Marudhu Panidan, was directed to be released on bial as per order of this Court dated 04.08.2016 in Crl MP (MD)No.6447 of 2016 in Crl A(MD)No.280 of 2016 on the file of this Court.

Crl A(MD)No.284 of 2016

The Appellant/Accused namely Ravi, aged about 29 years S/o.Nagaraj, was directed to be released on bial as per order of this Court dated 08.08.2016 in Crl MP (MD)No.6584 of 2016 in Crl A (MD)No.284 of 2016 on the file of this Court.

Crl A(MD)No.309 of 2016

The Appellant/Accused namely Muthu, aged about 28 years S/o.Ukkirapandi, was directed to be released on bial as per order of this Court dated 30.08.2016 in Crl MP (MD)No.7532 of 2016 in Crl A (MD)No.309 of 2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.A(MD).Nos.280, 284 and 309 of 2016

Crl.A(MD).No.280 of 2016

M.Jeyaprakash

: Appellant/A1

Vs.

1.The Deputy Superintendent of Police,
Paramakudi Division, Ramanathapuram.
(Crime No.57 of 2004)

: 1st Respondent/Complainant

2.Muthupandi

:2nd Respondent/Suo motu impleaded
as per order dated 04.12.2020

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C, to call for the records relates to the Spl.SC.No.64 of 2013 dated 26.07.2016 on the file of the Principal Sessions Judge, Ramanathapuram and set aside the conviction and sentence imposed on the appellant by allowing this appeal.

Crl.A(MD).No.284 of 2016

Ravi

: Appellant

Vs.

1.The State rep., by
Its Deputy Superintendent of Police,
Paramakudi Sub-Division,
Paramakudi, Ramanathapuram District.
(Parthibanoor Police Station in
Crime No.57 of 2012)



2.Muthupandi

: Respondents

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C, to allow the present appeal by setting aside the impugned judgment of conviction and sentence passed by the Principal District and Sessions Judge, Ramanathapuram dated 26.7.2016 in Spl.S.C.No.64 of 2013.

Crl.A(MD).No.309 of 2016

Muthu

: Appellant

Vs.

1.The State rep., by
Its Deputy Superintendent of Police,
Paramakudi Sub-Division,
Paramakudi,
Ramanathapuram District.
(Parthibanoor Police Station
in Crime No.57 of 2012)

2.Muthupandi

: Respondents

(R2 suo motu impleaded as per order of this Court dated 04.12.2020 in Crl.R.C(MD).Nos.280, 284 and 309 of 2016)

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C, to allow the present appeal by setting aside the impugned judgment of conviction and sentence passed by the Principal District and Sessions Judge, Ramanathapuram dated 26.07.2016 in Spl.S.C.No.64 of 2013.

In all appeals

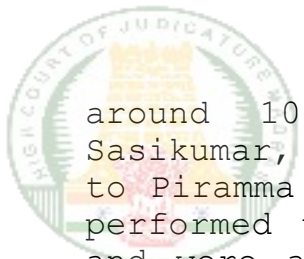
For Appellants	: Mr.Ajmalkhan Senior Counsel for Mr.M.Thirunavukkarasu
For R-1	: Mr.A.Robinson, Government Advocate (Crl.Side)

COMMON JUDGMENT

Heard the learned Senior Counsel appearing for the appellants and the learned Government Advocate (Crl.side) appearing for the first respondent. Since these cases arise under SC/ST (POA) Act, 1989, this Court thought it fit to hear the defacto complainant Thiru. Muthupandi also.

2.The occurrence had taken place in Sudiyr Village in Ramnad District. The case of the prosecution is that, on 03.03.2012, at

<https://hcservices.ecourts.gov.in/hcservices/>



around 10.00 pm, the defacto complainant-Muthupandi, P.W.10-Sasikumar, P.W.2-Sathurakiri, were in the village temple dedicated to Piramma Muneeswarar. Kumbabishekam in the said temple was to be performed the next day. The said three individuals joined others and were about to install the idol of Nandhi. At that time, the accused, who belong to 'Maravar' community are said to have abused the aforesaid persons by referring to their caste. Muthupandi, Sasikumar and Sathurakiri belong to 'Pallar' community. Taking exception to the conduct of the accused, the aforesaid individuals had approached P.W.3- Devaraj-Panchayat President and he was brought to the spot. That aggravated the situation and it is alleged that the accused persons committed physical assault on them and caused them injuries. All the three individuals were taken to Government Hospital, Paramakudi, immediately. Thereafter, intimation was sent to the local Police and their statements were also taken. P.W.1-Muthupandi's statement was recorded as Ex.P.1. Based on the same, Crime No.57 of 2012 (Ex.P.9) was registered on the file of the Parthibanoor Police Station for the offence under Sections 147, 148, 294(b), 323 and 506(ii) IPC and 3(1)(x) of SC/ST Act. Since the case involved offence under SC/ST Act, P.W.11-Deputy Superintendent of Police took over the investigation. Final report was made ready on 30.09.2012 and filed before the jurisdictional Magistrate, thereafter.

3.Cognizance of the offence was taken by the learned Judicial Magistrate, Paramakudi in PRC.No.5 of 2013. The case was committed to the learned Principal District and Sessions Judge, Ramnad. The case was taken up for trial in Spl.S.C.No.64 of 2013. As many as 9 charges were framed against the accused. There were totally 9 accused. Nagaraj, S/o.Malairaj was shown as first accused. During the pendency of the proceedings before the trial Court, Nagaraj passed away and the proceeding abated against him. The accused denied the charges framed against them and claimed to be tried.

4.The prosecution examined P.W.1 to P.W.11 and marked Ex.P.1 to Ex.P.14 and M.O.1 and M.O.2. On the side of the accused Ex.D.1 to Ex.D.4 were marked.

5.The learned trial Judge put all the incriminating circumstances against the accused and they denied the same. After consideration of the evidence on record, the learned trial Judge convicted and sentenced the accused as follows:.

	Offence	Conviction	Sentence
A-1 (Appellant in Crl.A.No.28 0 of 2016)	147 IPC	Convicted	Rs.1000 fine one month imprisonment in default



	323 IPC	Convicted	Rs.1000 fine one months imprisonment in default
	3(1)(X) SC/ST (POA) Act 1989		1 year Rs.2000 fine in default three months imprisonment
A-2 A-3	147 IPC	Convicted	Rs.1000 fine in default one month imprisonment
	323 (3 counts)	Convicted	Rs.3000 fine in default one months imprisonment
A-4 (Appellant in Crl.A.No.28 4 of 2016)	148 IPC	Convicted	6 months RI Rs.1000 fine , in default one months imprisonment
	323 IPC (Two counts)	Convicted	6 months RI Rs.1000 fine, in default one months imprisonment
A-5 (Appellant Cr.A.No.309 /16)	148 IPC	Convicted	6 months RI Rs.1000 fine, one months imprisonment in default
	323 IPC	Convicted	Rs.1000 fine one month in default imprisonment in default
A-6 A-7 A-8	147 IPC	Convicted	Rs.1000 fine one month imprisonment in default
	323 IPC	Convicted	Rs.1000 one month imprisonment in default

6. Aggrieved by the same, this appeal came to be filed.



7.The learned counsel appearing for the appellants reiterated the contentions set out in the memorandum of grounds and called upon this Court to set aside the impugned judgment and acquitted the accused and allow this appeal.

8.Per contra, the learned Government Advocate(Crl.side) submitted that the impugned judgment does not call for any interference and wanted this Court to dismiss the appeal. The defacto complainant submitted that he does not want the appellants to go to trial but he wanted them to express remorse for their conduct. The appellants agreed to invite Thiru.Muthupandi to their home and express their regrets. This undertaking is recorded.

9.I carefully considered the rival contentions and went through the materials on record.

10.The learned counsel appearing for the appellants pointed out that the primary allegations were directed only against Nagaraj, who was originally shown as A1 in the case. The said Nagaraj has passed away and prosecution has abated against him. I must note that the allegations have been made against the petitioners herein only in a general manner and not specifically. Nevertheless the Court below has chosen to find Thiru.M.Jayaprakash/appellant in Crl.A.No.280 of 2016 alone guilty of the offence under Section 3(1) (10) of the SC/ST Act and sentenced him to 1 year imprisonment.

11.The learned counsel appearing for the appellants pointed out that though the three witnesses, namely P.W.1, P.W.2 and P.W.10 claimed that they were injured, the wound certificate does not disclose any injury. The medical witness(P.W.7) would state that the witnesses complained of severe pain.

12.My attention has been specifically drawn to accident register (Ex.P.2 to Ex.P.5). It is mentioned that the injured persons smelt of alcohol. Though P.W.1-Muthupandi denied that he had taken liquor, P.W.10-Sasikumar fairly stated that they used to consume liquor. According to P.W.10, they consumed liquor the previous day and not on Kumbhabhisekam. P.W.7, who examined the injured witnesses in the first instance, had made a contemporaneous entry recording that they smelt of alcohol and there is no reason to disbelieve the same. Therefore, I have to necessarily come to the conclusion that these witnesses had entered the temple premises under the influence of alcohol.

13.It has also been clearly brought out in evidence that there are two groups in the village. One group was led by Nagaraj, who was the previous President of the Panchayat. The then President Panchayat was Devaraj (P.W.3). The injured witnesses belonged to Devaraj group. P.W.3 had admitted in his cross-examination that Nagaraj has filed several cases against him, Public Interest Litigation cases also filed against Deveraj. Therefore, there was



bitterness between Nagaraj on the one hand and Devaraj on the other. P.W.1, P.W.2 and P.W.10 belonged to and owed allegiance to P.W.3-Devaraj.

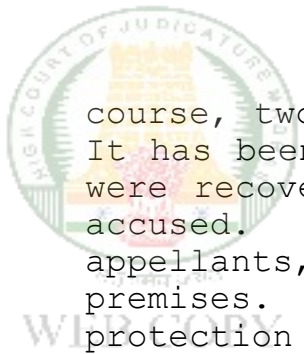
14. Since the witnesses were also under the influence of Alcohol and in that condition were trying to install the idol of Nandhi, there was objection from the accused group. In my view, that had triggered the entire occurrence.

15. Though P.W.1 had stated that he was abused by referring to his caste, P.W.2 had not at all spoken about the same. I carefully went through the testimony of P.W.2. Nowhere in his chief-examination, he has alleged that they were abused by referring to their community. In fact, he only stated that Nagaraj and Jayaprakash used filthy language and abused them. The community did not figure. Though P.W.10 had supported the prosecution case, in his cross-examination he admitted that they had consumed liquor only on the previous day. Kumbabishekam was to be performed on 04.3.2012. Therefore, the previous day was only 03.03.2012. Since P.W.2 has not supported the prosecution case and even P.W.1 in his testimony has made allegations primarily against Nagaraj, I am of the view that the conviction of Jayaprakash for the offence under Section 3(1)(10) of SC/ST Act is absolutely baseless.

16. That apart, P.W.1 had testified that he was examined by lady Sub-Inspector of Police, when he was in the hospital and that he was not examined or enquired by anybody, thereafter. It is well settled that the case arising under the SC/ST Act can be investigated only by the Deputy Superintendent of Police, who has been specially authorised for the said purpose.

17. P.W.11, investigation Officer was cross-examined in this regard. It was specifically stated that he did not have any authorisation during the relevant time. Though the said witnesses denied the suggestion, it has been brought out in his evidence the authorization issued by Superintendent of Police, Ramnad reached the Judicial Magistrate Court only on 05.12.2012. The said Investigation Officer would admit that such authorisation letter must reach the Court without any delay. On the other hand, the photocopy of the very same document was also marked as the defence (Ex.D.4). It could be there from that the proceedings were issued by Superintendent of Police only on 1st of May. Without going into the said contested claims, since P.W.1 himself has stated that he was examined only by the lady Sub-Inspector of Police and not by anybody else, I come to the conclusion that the proceedings are vitiated on this ground also.

18. I am also of the view that the prosecution is not justified in invoking Section 148 IPC. The said provision can be pressed into service only if an unlawful assembly having an unlawful object and guilty of rioting and armed with deadly weapons. Of



course, two weapons have been seized and marked as M.O.1 and M.O.2. It has been brought out in the cross-examination that those weapons were recovered only from near the temple premises and not from the accused. As rightly pointed out by the learned counsel for the appellants, the entire occurrence had taken place in temple premises. Since Ramnad is a sensitive place, sufficient Police protection was arranged. The temple committee as well as the Police had taken videographs. But, strangely it was not produced before the Court. If the accused had involved in rioting and they were with armed deadly weapons, certainly, the aforesaid three persons would have suffered grievous injuries. But they have not suffered even simple injury. They only complained of pain. It was on that basis the doctor had issued a certificate that they are having simple injury. I am therefore satisfied that the offence under Section 148 IPC is not made out. But then, I am satisfied that P.W.1, P.W.2 and P.W.10 were attacked by the accused persons. Therefore, the conviction for the offence under Section 323 alone is sustained. The accused are acquitted in respect of other offences, for which, they were charged.

19.The learned counsel for the appellants stated that eventhough they have been acquitted in respect of other offence, they would not apply for any refund of the fine amount already paid.

20.This submission made by them is recorded.

21.The Criminal Appeals are allowed in the above terms.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmk

To

1.The Principal District and Sessions Judge,
Ramanathapuram.

2.The Deputy Superintendent of Police,
Paramakudi Sub-Division,
Paramakudi,
Ramanathapuram District.
(Parthibanoor Police Station)



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

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

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11.12.2020

VB (22.01.2021) 8P 6C