



BAIL SLIP

The Appellant / Accused namely Akthar @ Akthar Basha S/o.Khadar & Khadar Mohideen was directed to be released on bail as per order of this court dated 27.11.2015 made in MP.No.1/2015 in CrI.A.No.737/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2021
PRONOUNCED ON : 27.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.737 of 2015

Akthar @ Akthar Basha ...Appellant/Accused

Vs.

The State represented by,
The Deputy Superintendent of Police,
Gingee Sub-Division,
Villupuram District.
Ananthapuram Police Station,
Crime No.15 of 2012

...Respondent/Complainant

Prayer: This Criminal Appeal has been filed under Section 374(2) of Cr.P.C to set aside the judgment dated 19.11.2015 made in Spl.S.C.No.127 of 2015, on the file of the learned District and Sessions Judge, special cases for SC/ST Act cases, Villupuram.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.R.Vinoth Raja
Government Advocate

JUDGMENT

(The case has been heard through Video Conference)

The convicted first accused is the appellant herein.

2.This Criminal Appeal has been filed to challenge the judgment passed in Spl.S.C.No.127 of 2015, by the learned District and Sessions Judge, special cases for SC/ST Act cases, Villupuram, dated 19.11.2015.



3(a).The case of the prosecution is that in the complaint given by one Subburayan (PW1), it is stated that the complainant and the accused are having adjacent lands. On 15.01.2012 at about 5.00 p.m., while the complainant was working in his land, at the time, the appellant herein and his brother trespassed into his land and threatened him to cut the palm trees situated in his land and when the same was questioned by the complainant, the appellant and his brother used filthy language and also abused complainant's community name and threatened him with dire consequences. Hence, the complainant has preferred a complaint before the Anadapuram police station.

3(b).Based upon the complaint given by the complainant, the Inspector of Police, Ananthapuram, Gingee Taluk, has registered a case in Crime No.15 of 2012 for offence under Section 294(b), 447, 506(ii) of IPC read with Section 3(1)(x) of SC/ST Act as against the appellant and another and the same were shown as under:

Offence committed by the accused persons	Charges framed under Section	Rank of the accused persons
For abusing in public place	294(b) IPC	A1 & A2
For trespassing	447 of IPC	A1 & A2
For threatening with dire consequences	506(ii) of IPC	A1 & A2
Abusing by utterance of caste word(SC/ST)	3(1)(x) of SC/ST Act	A1 & A2

Thereafter the case was forwarded to the respondent for investigation. After investigation, the respondent herein had filed a final report before the learned Judicial Magistrate, Gingee and the learned Magistrate has transferred the case to the learned District and Sessions Judge, special cases for SC/ST Act cases, Villupuram. The Lower Court had framed charges against A1 & A2 for alleged offence under Sections 294(b), 447, 506(ii) of IPC read with Section 3(1)(x) of SC/ST Act.

4.During the course of trial in Spl.S.C.No.127 of 2015, on behalf of the complainant seven witnesses were examined as PW1 to PW7 and Exs.P1 to P6 were marked; on behalf of the accused no witness has been examined and no document has been marked; no material object has been marked.

5.After taking into consideration the facts and circumstances of the case, the learned Judge has acquitted A1 from the charges framed under Sections 294(b), 447, 506(ii) of IPC and convicted A1 for the charge framed under Section 3(1)(x)



of SC/ST Act and imposed six month imprisonment and to pay a fine of Rs.1,000/- in default to undergo one month imprisonment. Further, the learned judge has acquitted A2 from all the charges framed against him by the Trial Court. Aggrieved against the same, the first accused has filed the present Criminal Appeal before this Court.

6. Heard both the learned counsels and perused the materials placed on record.

7. The learned counsel for the appellant would contend that the ingredients of Section 3(1)(x) of SC & ST Act has not been proved in the manner known to law and final report in this case has been filed after 30 days as prescribed under Rule 7 Sub-Clause 2 of SC/ST(POA) Rules.

8. The learned Government Advocate made submissions in support of the judgment of the Trial Court. As stated supra, after the trial, the learned Special Sessions Judge for SC/ST Act cases has acquitted A2 from all the charges and the Trial Court has held that the charges framed under Sections 294(b), 447 & 506(ii) of IPC against the present appellant herein were acquitted, however, for the offence under Section 3(1)(x) of SC/ST Act is made out and accordingly laid conviction and sentence against the appellant herein as stated supra.

9(a). The twin ingredients to attract the provisions of the above said charge for the offence under Section 3(1)(x) of the SC/ST Act is that:

(a) the victim should be the member of the Schedule Caste and the accused should not be member of the Schedule Caste.

(b) the accused should have uttered a caste word in order to humiliate the victim in a place of public view.

9(b). PW5/Revenue Witness viz., Kumar, has issued Community Certificate to PW1 and the accused, which was marked as Ex.P3, whereby, PW1 belongs to Schedule Caste while the accused belongs to Islam Thakni Caste and accordingly first ingredients as stated supra has been satisfied by the prosecution.

10. The suggestive case of the defence is that PW1 and accused are having lands side by side, on the ridges, the accused had plam trees and it is mutually agreed between the parties to cut and remove the palm trees so that, paddy field can be grown without any shadow and disturbance. Pursuant to the said mutual agreement, the accused had cut and removed all the palm trees however, in contravention to the mutual arrangement agreed upon between the parties, PW1 has refused to cut the palm trees. Hence, the accused has asked PW1 to cut and remove the palm trees on the ridges as per the mutually agreed



terms. Having infuriated over the questioning of the non compliance of mutual agreement between the parties, PW1, who is the doctor in the said area, has falsely given a complaint that as if the accused has uttered the caste word.

WEB COPY

11. PW1 in the witness box could depose that on 15.01.2012 at about 5.00 p.m., while PW1 was in the land, at that time, the appellant has trespassed into his land and used filthy language and also uttered the caste word to humiliate in front of PW2 and PW3.

12(a). Both PW2 and PW3 have admitted in the cross-examination that they belong to the very same caste of PW1, the complainant/PW1 and the appellant herein are adjacent land owners and they are already having dispute in respect of the mutually agreed terms as stated supra.

12(b). But in view of the non observance of the mutual agreement between the parties, the complainant has preferred a false complaint against the appellant herein and another.

13. PW1 in the cross examination had categorically admitted that there is a ridge between his lands and the accused lands and also admitted that on the East to West 80 palm trees are there and in view of that palm trees on the ridges on the side of PW1's land, it affects cultivation of the accused land and further, diametrically opposite direction, equal number of palm trees were in existence and both of them have agreed for cut the palm trees. However, the PW1 has denied the statement and could further depose that only after dispute the accused had cut the palm trees but further evaded to answer the question as to the date of cutting of the palm trees by the accused and also admitted that the palm trees standing on the ridges on the side of his land is still remain uncut.

14. At this juncture, both PW2 and PW3 had evaded to answer the above said suggestions by the defence put to the cross examination. PW6/Investigation officer, who had prepared Ex.P6/Rough Sketch, which has been prepared on 16.01.2012. In other words, Ex.P6/Rough Sketch was prepared on the very next day of the alleged occurrence. From the rough sketch, it can be reasonably inferred that there is only one line of palm trees standing adjacent to the land of PW1 and further it could be seen that on the side of the accused land there is no standing palm trees also lends support to the suggestive case of the defence. For the reasons not known the investigation officer has not mentioned the name of the accused in the situs of the accused in the rough sketch.



15(a).After going through chief and cross examination of PW1 and also the answer elucidated with the investigation officer, this Court finds that due to the civil dispute between the parties, PW1 has given exaggeration colour of the event and has filed the present complaint against the accused herein.

15(b).The PW7/Panner Selvam, who is the Deputy Superintendent of Police, in his cross examination has categorically admitted that neither in Ex.P1/complaint nor during recording of statement under Section 161 Cr.P.C., has mentioned about cutting of the palm trees and questioning of the accused on those grounds.

16.PW1 in the cross examination has admitted that he possessed 80 palm trees on the ridges side of his land and equal number of palm trees, on the ridges on the side of the accused land, but denied that the accused had cut the palm trees as per the understanding between the parties. However, the said evidence of PW1 stands falsified by the evidence of PW6 and PW7 coupled with Ex.P6/rough sketch. Hence, this Court finds that the evidence of PW1 suffers from exaggeration of the fact as to the utterance of caste word and due to the civil dispute existing between the parties, though the accused has cut and removed 80 palm trees as agreed between the parties, however, PW1 has failed to comply with his part of understanding and when the same was questioned by the accused, it appears that the complainant has exaggerated the event and hence, the version of PW1 is held to be unreasonable and untrustworthy.

17.In view of the material contradiction as stated supra, in view of the existence of the exaggeration of the event amounting material contradiction and probablization of the defence theory, from the answer elucidated with the cross-examination PW1 and PW7 coupled with Ex.P6 and the evidence of PW1, PW2 and PW3, does not pass the test of legal scrutiny and evidence of PW1 regarding utterance of the caste word is nothing but exaggeration of the civil dispute and hence, the same is not trust worthy to rely upon.

18.Accordingly, this Criminal Appeal stands allowed and the conviction and sentence passed in Spl.S.C.No.127 of 2015, by the learned District and Sessions Judge, special cases for SC/ST Act cases, Villupuram, dated 19.11.2015, as against the accused/appellant herein is hereby set aside.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



1. The District and Sessions Judge,
special cases for SC/ST Act cases,
Villupuram.
2. The Deputy Superintendent of Police,
Gingee Sub-Division,
Villupuram District.
Ananthapuram Police Station.
3. Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate,
Gingee.
5. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Vivekananthan, Advocate Sr No.43325

Cr1.A.No.737 of 2015

LN (CO)
PR (06/10/2021)