



BAIL SLIP

Criminal Appeal No.290 of 2016

The Petitioner / Accused (viz) S.Pushpa was released on bail as per the order of this Court dated 21.04.2016 in CrI.M.P.No.4640 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.290 of 2016

S.Pushpa

... Appellant/Accused

Vs.

The State represented by,
The Deputy Superintendent of Police,
Brahmadesam Police Station,
Tindivanam Taluk,
Villupuram District.
(Crime No. 333 of 2013)

... Respondent/Complainant

PRAYER: This Criminal Appeal has been filed under Section 374 Cr.P.C., against the judgment dated 11.04.2016, made in Special Sessions Case No.177 of 2015, on the file of the Special Court for Exclusive Trial of Cases Registered under SC/ST (Prevention of Atrocities) Act, Villupuram, convicting the appellant/accused under Section 324 of IPC and sentenced her to undergo simple imprisonment for one year and imposed fine of Rs.5,000/- in default to undergo simple imprisonment for three months and also convicting the appellant/accused under Section 3(1)(x) of the Scheduled caste and scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced her to undergo simple imprisonment for one year and imposed fine of Rs.5,000/- in default to undergo simple imprisonment for three months.

For Petitioner : Mr.M.Venkadeshnan

For Respondent : Mr.R.Vinoth Raja
Government Advocate



O R D E R

The convicted sole accused is the appellant herein.

2.This Criminal Appeal has been filed to challenge the judgment passed in Spl.S.C.No.177 of 2015, by the Special Court for Exclusive Trial of Cases Registered under SC/ST (Prevention of Atrocities) Act, Villupuram, dated 11.04.2016, wherein, the learned Judge has convicted the appellant/accused for the offence under Section 324 of IPC and sentenced her to undergo simple imprisonment for one year and imposed a fine of Rs.5,000/- in default to undergo simple imprisonment for three months and also convicted the appellant/accused for the offence under Section 3(1)(x) of the Scheduled Caste and scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced her to undergo simple imprisonment for one year and imposed fine of Rs.5,000/- in default to undergo simple imprisonment for three months.

3(i).The respondent police has filed a charge sheet alleging that on 19.08.2013 at about 1.00 p.m., within the limit of Brammadesam Police Station, at Keezhsevar village, near the way leading to Thavamuneeswarar Temple Pond, the witness Amutha and other witnesses returned to their houses after the completion of 100 days work, the accused wrongfully restrained the witness namely Amutha and committed the offence punishable under Section 341 of IPC, 1860.

3(ii).The accused has taken a stone from the ground and threatened the witness Amutha to kill her and had beaten on her head and caused injury and thereby, the accused is alleged to have committed the offence punishable under Section 307 of IPC, 1860.

3(iii).The accused scolded the witness namely Amutha in the public place as "இருளர் தெவிடியா முண்டா" (Irula Prostitute Widow) and committed the offence punishable under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4.The learned Principal Sessions Judge, Villupuram has framed the charges against the accused for the offence under Section 341 and 307 of IPC and under Section 3(1)(x) of the SC/ST(Prevention of Atrocities) Act, 1989.

5.To prove the case of the prosecution, PW1 to PW8 were examined and Exs.P1 to P10 were marked on the side of the prosecution. No witness was examined and no exhibit was marked on the side of the defence. Material Objects 1 and 2 were marked on the prosecution side.



6. PW1 is the victim girl; PW2, PW3, PW4 are the persons, who said to have been accompanied with the PW1; PW5 is the person, who has admitted PW1 in the hospital; PW6 is the attester of Observation Mahazar/Ex.P2, Seizure Mahazar Ex.P3, MO1 and MO2; PW7 is the Assistant Civil Surgeon of Tindivanam Government Hospital, who has treated the victim and issued Ex.P4/Accident Register; PW8 is the Investigating Officer, who had filed the charge sheet after investigation. For the reasons best known, the prosecution has not examined LW13/Sub Inspector of Police, who has received complaint and registered Ex.P5/printed FIR. For the reasons discussed infra, after the trial, the learned Sessions Judge has convicted the accused under Section 3(1)(x) of SC/ST Act and 324 of IPC, however, acquitted the accused for the offence under Section 341 and 307 of IPC.

7. The case of the prosecution as could be seen from the cross examination of PW1 and PW2 is that PW1 is the servant worked in the house of the accused and they are supplying coolies to do agricultural activity. To bring the coolies for the accused, the victim had cheated the accused by showing several number of coolies have worked in the 100 days employment scheme and thereby, misappropriated more money than coolies worked, thereby she cheated the accused and hence, the accused stopped the services of the victim and hence, a false case has been filed against them.

8. The learned Sessions Judge has negatived the defence case and convicted the accused as stated supra and hence, the Criminal Appeal.

9. The learned counsel for the convicted accused/appellant herein would contend that there is a delay of 17 days in preferring the complaint to the police. In support of the specific suggestion put to PW1 and PW8/Investigation Officer, the learned Sessions Judge has not questioned the said plea raised by the accused. Furthermore, there is a material contradiction as to the use of the weapon that whether it is stone or stemp and further contended that as per the medical evidence, it is a stone; as per the evidence of PW3 and PW4, it is a stemp. Furthermore, as to the alleged recovery, the evidence of PW1 is that they have handed over the material object to the police, however, the Investigating Officer has projected as if the Material Objects were recovered from the scene of crime. The caste word mentioned in Ex.P1/complaint is different from caste word spoken to by PW1 in the witness box and hence, seeks for acquittal.

10. The leaned Government Advocate (Crl.Side) appearing for the respondent made submissions in support of the finding rendered by the learned Sessions Judge.



11. At the outset, as per Ex.P6/proceedings of the Superintendent of Police, Villupuram District for nominating the Investigating Officer, Ex.P9/Community Certificate of the victim issued by District Revenue Officer, Tindivanam and Ex.P10/Community Certificate of the accused issued by Thasildar, Tindivanam, the victim is the member of the Hindu Irular Community while the accused is the member of the Hindu Vanniyar Community and hence, ingredients for the alleged offence under Section 3(1)(x) of SC/ST is made out. Whether the accused has uttered caste word with an intention to humiliate PW1 in the public place within public view, in respect of charge under Section 3(1)(x) of SC/ST Act? From Exs.P7/Observation Mahazar and Ex.P8/Rough Sketch, alleged scene of Crime is the public place. Whether the accused has uttered caste word against PW1 in a public place within public view? Admittedly, none of the prosecution witness except PW1 has deposed therein regarding utterance of caste word by the accused against PW1, assumes significance.

12. It remains to be stated that for the reasons best known, the Sub-Inspector of Police, who has received Ex.P1/Complaint from PW1 and registered Ex.P5/printed FIR as described from the witness box by not given evidence before the Court.

13. It is the specific suggestive case of the accused that the complaint was not prepared by PW1, it was prepared by the political party affiliated to communist community and Ex.P1/complaint was written by an Advocate in the Advocate Office and an answer was also elicited from the cross-examination of PW1 to that effect viz., PW1 has admitted in the cross-examination that she had not written Ex.P1/complaint and it was written by the advocate in the Advocate Office affiliated to the communist party and the said complaint said to have been lodged with a delay of 17 days. PW8/DSP, could depose that the complaint has been given only after 17 days. The learned Judge has filed to take note of this aspect and chosen to omit discussion on the point of delay.

14. As rightly pointed out by the learned counsel for the appellant, when a complaint has been emerged from the Office of the Advocate, it is a coloured complaint and fabricated complaint and when that being the case, the learned Sessions Judge ought to have insisted upon the police constable who had received the complaint and registered FIR to give evidence. So as to give particulars, the prosecution has successfully evaded to examine the material witness and hence, I find that the Ex.P1/complaint is the consulted complaint and Ex.P5/FIR also indicates that the accused has uttered certain words against PW1 alleging that PW1 who is servant of the accused is having illicit physical relationship with her husband and maintaining



paramour relationship with her husband. The suggestive case of the defence regarding the illegal relationship of PW1 with husband, by words uttered on that day duly accepted by PW2 and PW4 in their cross examination assumes significance.

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15. The accused is legally wedded by her husband and she scolded PW1, who is ex-worker, alleged to have had physical relationship with her husband during her absence and calling her as a paramour and hence, this Court finds that there is a previous enmity between PW1 and the accused with regard to their marital status and illegal activity with her husband assumes significance and hence, this Court finds that the suggestive case of the defence that due to the previous enmity with regard to the employment and conduct of PW1, there is a previous enmity between the appellant and PW1 and hence, the exaggerated event cannot be ruled out.

16. It remains to be stated except PW1, none of the prosecution witnesses PW2 to PW4 deposed regarding the utterance of caste word in the public place within public view. Accordingly, this Court holds that in view of the previous enmity, there is a motive and in the absence of any positive evidence, to show that utterance of caste word in public place within public view has not been satisfied by the prosecution. In this view of the matter, for non compliance of essential ingredients of offence under Section 3(1)(x) of SC/ST Act, the conviction cannot be laid in law. Accordingly, conviction under Section 3(1)(x) of SC/ST Act stands vacated and set aside.

17. On the conviction of Section 324 of IPC, PW7/ Dr. Santhiya could depose that the injuries appears on the body of PW1 are simple in nature and she was treated as out patient (OP), while PW1 has exaggerated the said injuries. As could be seen from the version of PW1 in the witness box, her further evidence is that she was treated as in-patient for 15 days falls to ground in view of the oral evidence of PW7 and documentary evidence of Ex.P4/Accident Register and hence, I find that a minor incidence of wordily quarrel between two ladies was exaggerated by PW1 to wreck vengeance against the accused with regard to the sharing of the husband of appellant.

18. Taking note of the answer elucidated in the cross-examination PW1 and PW5 that such an injury caused on the head of the victim hence, this Court finds that the conviction under Section 324 of IPC is sustainable, further, the sentence is modified to the period already undergone and the fine amount of Rs.5,000/- awarded by the learned Sessions Judge is enhanced to Rs.10,000/- and Rs.5,000/- already paid for the purpose under Section 3(1)(x) of SC/ST Act, which was set aside by this Court, shall be adjusted to the balance amount.



19. With the above observations, this Criminal Appeal stands allowed to the limited extent as indicated above.

Note: The Registry is directed to call for explanation from the learned Judicial Officer, if he is in service, about the non examination of the constable, who has received FIR and also not advertng to the delay aspect raised by the defence in any part of the judgment and index to the judgment was not in accordance to the instructions given by the High Court.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Court for Exclusive Trial of Cases
Registered under SC/ST (Prevention of Atrocities) Act,
Villupuram.
2. The Judicial Magistrate No.2,
Tindivanam.
3. The District Collector,
Villupuram District.
4. The Director General of Police,
Mylapore, Chennai-4.
5. The Deputy Superintendent of Police,
Brahmadesam Police Station,
Tindivanam Taluk,
Villupuram District.
6. The Public Prosecutor,
High Court, Madras.

Copy to:

1. The Registrar (General)
High Court,
Madras.



2.The Registrar (Judicial)
High Court,
Madras.

3.The Section Officer,
B Section,
High Court, Madras.

+1cc to Mr.M.Venkadeshnan, Advocate Sr No.38983

Crl.A.No.290 of 2016

SMI (CO)
PR (15/09/2021)