



BAIL SLIP

The Appellant/1st accused namely, P.Sakthivel, S/o.Paramasivam, Mettu Street, Mohanur, Namakkal District, was released on bail as per the Order of this Court dated 26.06.2020 in CrI.M.P.No.4199 of 2020 in CrI.A.No.253 of 2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.253 OF 2020

P.Sakthivel

... Appellant

Versus

The State of Tamilnadu
Rep. by its
Deputy Superintendent of Police,
Mohanur Sub Division,
Namakkal District.
Crime No. 709 of 2010.

... Respondent

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the order of conviction and sentence to undergo 6 years rigorous imprisonment and to pay a fine of Rs.1000/- under Section 325 IPC., in default shall undergo simple imprisonment of six months. A1 is also directed to pay a sum of Rs.25,000/- to PW.1/Ayyamuthu as Victim Compensation under Section 357 of Cr.P.C., passed in S.C.No.106 of 2018, dated 06.03.2020, by the Special Court for SC & ST (POA) Act Cases, Namakkal.

For Appellant : M/s.A.Tamilvanan

For Respondent : Mr.S.Sugendran
Government Advocate [CrI. Side]



JUDGMENT

This Criminal Appeal has been filed by the first accused/appellant, to set aside the Judgement of conviction and sentence dated 06.03.2020 in S.C.No.106 of 2018, passed by the Special Sessions Court of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act Cases, Namakkal.

2.The respondent/police registered a case against the appellant herein and another, in Crime No.709 of 2010 for the offences under Sections 294(b) and 304 of IPC and Section 3(1)(x) of the Schedule Caste/ Scheduled Tribe (Prevention of Atrocities), Act, 1989. The respondent/police, after completing investigation, laid a charge sheet before the Learned Judicial Magistrate Namakkal, which was taken on file in P.R.C.No.06 of 2016, since the offence against the woman, the appellant case was triable only by the Court of Sessions. The Learned Judicial Magistrate committed the case to the Learned Principal District and Sessions Judge, Namakkal, which was taken on file in S.C.No.106 of 2018 and after completing the formalities, framed charges against the first accused/appellant herein for the offence under Section 3(1)(x) of SC/ST (POA), Act,1989 and Section 325, 294(b) of IPC., As against the second accused charges were framed for the offences under Section 3(1)(x) of SC/ST (POA), Act,1989 and Section 325 r/w 34, and 294(b) of IPC and since subsequently, the Special Court was established, the case was made over to the Learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal.

3.In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined as P.W.1 to P.W.9, besides 14 documents were marked as Ex.P1 to P14 and there is no material object produced.

4.Even though the Trial Court acquitted the first accused for the offence under Section 3(1)(x) of SC/ST, Act, and also the second accused from all the charges, the first accused/appellant herein was convicted for the offence under Section 325 IPC alone for which, he was sentenced to undergo 6 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for six months. He was also directed to pay a sum of Rs.25,000/- to PW.1/Ayyamuthu as Victim Compensation under Section 357 of Cr.P.C., However, it was ordered that the period of sentence already undergone by A1 shall be set off under Section 428 of Cr.P.C., Challenging the said Judgment of conviction and sentence, the first accused/appellant has filed the present appeal before this Court.



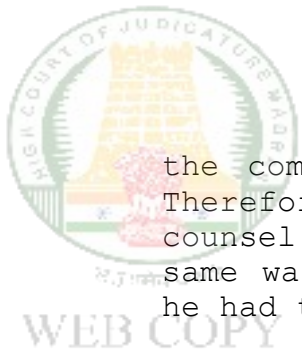
5. The learned counsel for the appellant would submit that there is inordinate delay in lodging the complaint. The occurrence is said to have taken place on 05.11.2010, but, the complaint was lodged only on 19.11.2010, after 14 days of the occurrence, which is inordinate and the prosecution has failed to explain the inordinate delay, which is fatal to the case of the prosecution. Further, he would submit that P.W.3 is not an eyewitness, however, the Trial Court erred in relying on the evidence of P.W.3 to convict the appellant for the offence under Section 325 of IPC., Further, it is submitted that the de-facto complainant was admitted in the hospital on the date of occurrence i.e., 05.11.2010. In the Accident Register, it was recorded by the medical officer that an unknown person assaulted the defacto complainant. Even in the complaint, the de-facto complainant did not mention the name of the accused. Subsequently, during the trial only, he named the accused. With the result, the name of the accused was not mentioned in the First Information Report and the Accident Register. Moreover, in the wound certificate also it was noted as "unknown person assaulted the victim" and this creates doubts as regards the involvement of the appellant in the occurrence. The de-facto complainant had falsely foisted the case against the accused/appellant herein for the best reasons known to him. After completing the investigation, charge sheet was laid before the Trial Court, but the Trial Court failed to appreciate the evidence of prosecution witnesses. P.W.1 to P.W.5, are only interested witnesses, hence, their evidence is not trustworthy. There are material contradictions in the evidence of P.W.1 to P.W.3 and even the Doctor/P.W.6 stated in his report that the victim was assaulted by one unknown person. Therefore, the prosecution has failed to prove the case against the appellant beyond reasonable doubts. Though wound certificate/Ex.P5 shows that the victim sustained injuries, the prosecution has not established with materials that the appellant has only caused those injuries to the de-facto complainant. Therefore, the benefit of doubt ought to have been given to the appellant. Though the Trial Court did not believe the evidence of PW.1 to PW.3, however, on the ground of sympathy it accepted the case of the prosecution for the offence under Section 325 of IPC., and convicted the appellant. However, on the basis of the very same set of evidence adduced by the prosecution witnesses, the Trial Court acquitted the appellant herein for the offence under Section 3(1)(x) of SC/ST (POA), Act, 1989. When two views are possible, by taking into account same set of evidence, the view, which favours the accused has to be taken into account and the Trial Court ought not to have convicted the appellant. Therefore, the Judgment of the Trial Court is perverse and it is liable to be set aside.



6. The learned Government Advocate (crl.side) would submit that the de-facto complainant sustained injuries on 05.11.2010. He was admitted in the hospital on the very same day and after taking treatment, he was discharged. Subsequently, he went to a private hospital for taking further treatment and thereafter, he went to his daughter's house. After recovering from the injuries, he approached the respondent/police and lodged a complaint, wherein, he had clearly explained the reason for the delay in lodging the complaint. The Trial Court also appreciated the same properly and concluded that such delay has not vitiated the case of the prosecution. In this case, admittedly, the de-facto complainant sustained injuries, immediately he was admitted in the hospital and took treatment for three days, thereafter, he stayed in his daughter's house and taken rest. Thus, the delay has been properly explained. The de-facto complainant sustained two injuries out of which, one is simple in nature and another one is grievous in nature. The Doctor, who examined the victim, has also deposed about the nature of injuries sustained by the de-facto complainant. Therefore, the prosecution proved the case against the appellant beyond reasonable doubt. However, the Trial Court acquitted the accused for the offence under Section 3(1)(x) of SC/ST Act, since there is no independent witness to show that the accused uttered the abusable words in public place or in the presence of other persons. However, the Trial Court has rightly appreciated the evidence with regard to the injuries, the Accident Register issued by the Doctor and the wound certificate, which clearly established that the defacto complainant sustained injuries and the same was caused by the appellant. Therefore, the Trial Court convicted the accused for the offence under Section 325 of IPC., There are enough materials to prove that the appellant attacked the victim and thereby, he caused injuries to the victim. There is no merits in the appeal and the Trial Court rightly convicted the accused for the above said offence, hence, the appeal is liable to be dismissed.

7. Heard the learned counsel for the appellant/A1 and the learned Government Advocate (crl.side) for the respondent and perused the materials available on record.

8. The case of the prosecution is that the de-facto complainant was on the way to Mariamman Temple. While crossing the house of the accused, the accused and his wife scolded him in a filthy language by using his caste name and the first accused attacked him with a lower portion of the plantain tree. Hence, the complaint was registered against the accused/A1 & A2, for the above said offences.



the complaint with delay, it was properly explained by P.W.1. Therefore, this Court rejects the contention of the learned counsel for the appellant. Though the delay is inordinate, the same was explained that the injuries are grievous in nature and he had taken treatment, which resulted in the delay.

13. Admittedly, PW.1 is an illiterate village man and even Ex.P5/wound certificate states that on the very same day on 05.11.2010, he was admitted in the hospital. Subsequently, he went to his daughter's house for taking rest and thereafter, he went to the police Station and lodged a complaint.

14. Considering the nature of the injury sustained by P.W.1 the evidence of injured witness, mere delay is not a fatal to the case of the prosecution. Since Ex.P5/wound certificate clearly shows that the PW.1 was admitted on the date of occurrence on 05.11.2010. and he sustained grievous injuries. Though on the defence side, Ex.D1/ the copy of the Accident Register was marked, which clearly shows that P.W.1 was admitted in the Hospital on 05.11.2010 itself, and the evidence of P.W.1 show that the injuries were caused by the appellant only.

15. Though in the Accident Register, it is mentioned as unknown person, but the evidence of P.W.1 stated that he was assaulted by the appellant. PW.1 is not the author of Ex.P1/complaint, the Doctor had written and recorded the statement, in which the name of the appellant and other one person was not mentioned, since P.W.1 sustained injuries and though he was conscious at the time of hospitalisation, the version of P.W.1 could not have been understood by the Doctor, while recording his statement. But, however, PW.1 has clearly stated that the appellant has caused the injuries. Therefore, totally, from the evidence of the prosecution witnesses, it is proved that the appellant caused the injury to PW.1, which is grievous in nature, which falls for the offence under Section 325 of IPC. This Court also independently re-appreciated the evidence of prosecution witnesses and finds that the appellant has committed the offence under Section 325 of IPC. Further, there was no contrary evidence to show that the victim/P.W.1 was not attacked by the appellant and sustained injuries in the said occurrence. The learned counsel for the appellant stated that there are material contradictions in the evidence of the prosecution, but, according to this Court, which would not go into the root of the case of the prosecution. This Court finds that there is no reason to disbelieve the evidence of PW.1, PW.6 and the prosecution has proved its case beyond all reasonable doubt and there is no reason to interfere with the Judgment of the Trial Court and hence, the appeal is liable to be dismissed.



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16. Accordingly, the Criminal Appeal is dismissed. The Trial Court is directed to secure the appellant to undergo the remaining period of imprisonment, if any.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Superintendent of Police,
Mohanur Sub Division,
Namakkal District.
2. The Public Prosecutor,
High Court, Madras.
3. The Sessions Judge,
Special Court for SC & ST (POA) Act Cases,
Namakkal.
4. The Superintendent of Prison,
Central Prison, Coimbatore.
5. The Section Officer,
Criminal Section,
High Court, Madras.
6. The Judicial Magistrate, Namakkal.
7. The Principal District and Sessions Judge,
Namakkal.

+1cc to M/s.A.Tamilvanan, Advocate, S.R.No.44198

Crl.A.No.253 of 2020

NK(CO)
RLP(18/02/2022)