



BAIL SLIP

The Accused viz., Raja (2nd Accused) in Crl.A.No.487/2019 and Venu (7th Accused) in Crl.A.No.486/2019 (Spl.S.C.No.229/15 on the file of the Special Court for SC/ST (POA) Act dated 11.07.2019 was released on bail as per order of the Hon'ble High Court in Crl.MP.No.10627/19 in Crl.A.No.487/19 and Crl.MP.No.10613/19 in Crl.A.No.486/2019, dated 01.08.19.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2021

PRONOUNCED ON : 22.03.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Appeal Nos.486 and 487 of 2019

Venu .. Appellant in Crl.A.486 of 2019/
7th Accused

Raja .. Appellant in Crl.A.No.487/2019/
2nd Accused

Vs

The Deputy Superintendent of Police,
Ulundurpettai Sub Division,
Thirunavalur Police Station,
Villupuram District.

.. Respondent/Complainant
in both Appeals

PRAYER : Criminal Appeals filed u/s.374(3) of Cr.P.C., to call for the records under Spl.S.C.No.229/2015 on the file of the Special Sessions Court for SC/ST Act cases, Villupuram and set aside the judgment dated 11.07.2019 and set aside the same and acquit the appellant.

For Appellants : Mr.C.S.S.Pillai
for Mr.T.K.S.Gandhi

For Respondent : Mrs.T.P.Savitha
Govt.Advocate (Crl.Side)



COMMON JUDGMENT

Both the Criminal Appeals are taken up together and disposed of by a common judgment as they arise out of the same judgment dated 11.07.2019 passed in Spl.S.C.No.229/2015 on the file of the Special Sessions Court for SC/ST Act (Prevention of Atrocities) cases, Villupuram.

2. In Criminal Appeal No. 486 of 2019, the appellant is 7th Accused. In Criminal Appeal No.487 of 2019, the appellant is 2nd accused. Totally there are 11 accused in Special S.C.No.229 of 2015.

3. The respondent police registered the case against the appellants and 9 others in Crime No.490 of 2013 for the offence Sections 147, 148, 294(b), 323, 324, 506(ii) IPC r/w.Section 3 (1)(x) of SC/ST Act. After completing the investigation, the respondent police laid the charge sheet before the Judicial Magistrate, Ulundurpettai. The learned Judicial Magistrate taken the charge sheet on file in P.R.C.No.10/2014 and since the offence is triable by the Sessions Court and also falls under SC/ST Act, committed the case to the Principal Sessions Judge, Villupuram, who has taken the appeal in S.C.No.24/2015 and since the offence is under SC/ST Act, the case was made over to the Designated court, the Special Sessions Judge, SC/ST Act cases.

4. The learned Designated Court taken the case on file and renumbered as Special S.C.No.219/2015. After completing the formalities, the Special Sessions Judge SC/ST Act, Villupuram, framed the charges against the appellants and others for the offence u/s.147, 294(b), 323, 506(i) IPC read with Section 3(1)(x) of SC/ST Act.

5. After framing charges, during the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 8 witnesses were examined as P.Ws.1 to 8 and 8 documents were marked as Ex.P.1 to Ex.P.8 and no material object was exhibited.

6. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the prosecution witnesses put before the appellants and they denied it as false. No oral or documentary evidence was examined and produced on the side of the defence.



7. After completing the trial and hearing the arguments on either side, the Designated Court convicted the appellants as follows:-

The appellants in Crl.A.No.487/2019 A-2 and Crl.A.486/2019 A-7 were convicted for the offence u/s.147 IPC and imposed fine of Rs.1000/- in default to undergo 3 months Simple imprisonment; also convicted u/s.3(1)(x) SC/ST (POA) Act and sentenced to one year rigorous imprisonment and imposed a fine of Rs.1000/- in default to undergo 3 months simple imprisonment and also they were convicted u/s.506(i) IPC and imposed a fine of Rs.1000/- in default to undergo 3 months Simple Imprisonment. Challenging the said conviction and sentence, the appellants filed the present appeals.

8. The learned counsel for the appellants would submit that the place of occurrence itself is doubtful and creates suspicion. Further he would submit that the incident is a clash between two groups and no independent witness was examined. As far as the appellant in Crl.Appeal No.487/2019, A-2 is concerned, the trial court convicted only on mere presumption, suspicion and conjectures without any supporting evidence. The trial court has not properly appreciated the evidence on record, convicted the appellant/A-2 by improper appreciation of evidence. The ingredients of Section 147, 506(i) IPC and Section 3(1)(x) of SC/ST Act have not been attracted and made out. Though in total, there are 11 accused in this case, before the doctor, in the Accident Register, it is mentioned that 10 known persons have attacked, therefore, there are discrepancies. Though the Designated Court acquitted A1, A9, A10 and A11, erroneously, convicted the appellants in Crl.A.Nos.487/2019-A2 and Crl.A.No.486/2019- A7 and the material witnesses were withheld by the trial court and there are material contradictions between the evidence of P.Ws.1, 2 and 3. They were cited as eyewitnesses but the trial court failed to consider the material contradictions between the evidence of P.W.1 to P.W.3. There is no specific overtact against the appellants made by any one of the eyewitnesses or P.W.3. The eyewitnesses have given varying versions of understanding. FIR reached the court very belatedly and it also creates doubt. The medical witness P.W.5 has clearly stated that there were no serious injury on the body of the P.W.1. P.W.1 in his evidence has stated that 40 people attacked him and P.W.2 has stated 15 people had attacked him and P.W.3 has not stated so in his evidence which being uncorroborated. Therefore, the evidence of P.W.3 is liable to be rejected and he was not supposed to be an eyewitness and all the eyewitnesses are interested witnesses. In the FIR- Ex.P.4, it is stated that one Head Constable has recorded the statement of P.W.1 at hospital and not examined on the side of the prosecution during the trial. P.W.6 Sub



Inspector of Police has categorically stated in his evidence that P.W.1 had come to his police station on 19.11.2013 at 6 am and given the written complaint, on the basis of which FIR came to be registered. PW.5 has categorically stated that P.W.1 was referred to Villupuram Government Hospital for further treatment on 18.11.2013 at 8 p.m., and so could not have given the complaint on the next day. Therefore, it is highly doubtful as to where the complaint has been given as stated by the prosecution. The mere genesis of the case being FIR-Ex.P.4 is surrounded in doubt. P.W.1 has not sustained serious injuries despite weapons used in the attack and the offence u/s.3(1)(x) of SC/ST Act is not attracted as there are no materials to prove the same. There is no overtact mentioned by P.Ws.1, 2 and 3 as against the appellants. Therefore, for the conviction against the appellant/A2 is unwarranted and liable to be set aside.

9. As far as CrI.A.486/2019, A7 is concerned, learned counsel for the appellant would submit that none of the witnesses have spoken anything against this appellant for the offence u/s.3(1)(x) of the SC/ST Act. When the accused A1, A9, A10 and A11 have been acquitted, the same benefit of doubt should have been extended to this appellant also. To support the allegation that this appellant degraded P.Ws.1 to 3 by using the caste name and that such words are uttered by the appellant, no material evidence is put forth by the prosecution and no witness was examined before the trial court. There are material contradictions between the evidence of P.Ws.1, 2 and 3. The eyewitnesses have given varying version of evidence which is highly doubtful. FIR was registered belatedly and the same reached the court thereafter, which also creates doubt, so after deliberations and discussion, the case has been registered and they have improved the version in every stage. There are material contradictions between the version of P.Ws.1 to 3 who are stated to be eyewitnesses in this case. P.W.1 has not sustained serious injury despite weapons used by the appellant viz..stick and the prosecution failed to establish that ingredients of Section 147 and 506(i) IPC are made out. None of the witnesses have spoken against the appellant/A-7. The learned counsel for the appellant would further submit that there are cases in counter and there are five previous cases against the complainant and there was previous enmity and motive. Therefore, they have foisted false case against the appellants. A reading of the complaint, FIR and evidence of P.W.1 would clearly show that there are contradictory statements and material contradictions. The trial court failed to appreciate the evidence and convicted the appellants without any basis which warrants interference of this court.



10. The learned Government Advocate (Crl.Side) would submit that P.W.1 is the injured witness and he has clearly spoken about the overtact against the appellants and in the complaint, he has clearly stated about the involvement of the appellants in this case. Even though the case was registered against totally 11 accused, after the trial, the trial court found that the prosecution proved the case against the appellants herein. The doctor evidence also corroborated the case of the prosecution. Evidence of P.W.1 is also clear that he sustained grievous injuries. The medical officer has stated that there was no external injury. Though there was no external injury, after examination, it was found that P.W.1 sustained injury in ear which is grievous in nature. The appellant/A-2 in Crl.A.487/2019 is stated to be the President of the said village, but actually, wife of the appellant is the President of the village and he acted as President and dominated the people of the village and trial court has rightly convicted the appellant.

11. Heard and perused the records.

12. The case of the prosecution is that due to previous enmity between the accused 1 to 11 and the witnesses 1 to 3 on account of digging the land by using JCB for laying pipe line for water, P.W.1 told the accused persons to arrange water supply for the village and therefore, on 18.11.2013 at 7.30 am,, the accused persons came to attack P.W.1 and thereby the accused persons were alleged to have committed offence u/s.147 IPC; further by using hands and legs, accused persons attacked P.W.1 and caused injuries and thereby committed offence u/s.323 IPC; further the accused persons were alleged to have threatened the P.Ws.1 to 3 with dire consequences and thereby committed offence u/s.506(i) IPC and that the accused persons in general public view, uttered the caste name of P.Ws1 to 3 and scolded them and thereby committed offence u/s.3(1)(x) of SC/ST Act.

13. The appellate court is a fact finding court. It has to give its independent finding for which it has to reappraise the entire evidence and findings of the trial court.

14. The designated court framed four charges against the appellants u/s,147, 323, 506(i) IPC and u/s.3(1)(x) of SC/ST (POA) Act . Out of which, the designated court has given a finding that Accused Nos.2,4,5,6 and 8 committed offence u/s.147 IPC and imposed fine of Rs.1000/-, in default, to undergo 3 months simple imprisonment, convicted the accused Nos.2,5,6 and 7 u/s.3(1)(x) of SC/ST Act and to undergo one year Rigorous



imprisonment and fine of Rs.1000/- each in default to undergo three months simple imprisonment, A-2 and A-7 were convicted u/s.506(i) IPC and imposed fine of Rs.1000/-, in default to undergo three months simple imprisonment. Accused Nos.5 and 8 have been convicted u/s.323 IPC and imposed fine of Rs.1000/- in default to undergo three months simple imprisonment. Accused Nos.1,9, 10 and 11 were acquitted for the offences.

15. In order to prove the above said charges, totally 8 witnesses were examined, out of which P.Ws.1 to 3 are eye witnesses and PW.5 is the doctor, who admitted the injured witness in the hospital and made entry in the Accident Register.

16. A reading of the evidence of P.W.1 has clearly narrated the fact that on 17.11.2013 at about 6 p.m., by using JCB, to lay a water pipe line, the land was dugged and this action was questioned by P.W.1 and P.W.1 raised the issue that there was no water supply for the village and therefore, asked to stop the JCB work, after making arrangement for water supply, they can continue the work. On 18.11.2013, when P.W.1 was taking tea in tea shop, P.W.3 told P.W.1 that Panchayat President called upon him and when P.W.1 gone to the place to meet Panchayat President, the appellants along with other accused persons scolded the complainant with filthy language and uttered caste name and also threatened P.W.1 with dire consequences and further the appellants along with other accused persons attacked P.W.1 and therefore, he sustained injuries and he gave a complaint.

17. The learned counsel for the appellants would submit that the occurrence is alleged to have taken place on 17.11.2013 at 6 p.m., while P.W.1 stopping JCB, but, the occurrence as per complaint has taken place on 18.11.2013 at 7.30 a.m. when P.W.3 called P.W.1 to the place where Panchayat President was sitting and at that time, P.W.1 told that he questioned the digging of water pipe line and stopped the work of JCB and explained the reason for the same. At that time, A-2 scolded P.W.1 and other witnesses with filthy language and threatened P.W.1 with dire consequences and also scolded him with filthy language and also uttering his caste name, he also beaten P.W.1 with hands and legs and kicked P.W.1 at that time. P.Ws.2 and 3 were also present in the scene of occurrence. The learned counsel for the appellants would submit that with regard to the place of occurrence, there is variation in the complaint and FIR; further P.W.1 has not mentioned in the complaint that A-7 uttered the caste name of P.W.1. Further doctor has also stated that there is no external injury.



18. A combined reading of evidence of P.Ws.1 to 3 and also the complaint and FIR shows that there is specific overtact against the appellant in Crl.A.No.487 of 2019/A-2 and even in the complaint, P.W.1 has specifically stated that A-2 scolded with filthy language and also beaten him and also uttered his caste name and in Ex.P.3 wound certificate, the opinion of the doctor clearly shows that P.W.1 sustained ear injury which is grievous in nature and other injuries are simple in nature.

19. Therefore, a combined reading of evidence of P.W.1 and also medical evidence would clearly make out that the prosecution has proved its case against A-2/appellant in Crl.A.No.487/2019. P.Ws.2 and 3 also corroborated the evidence of P.W.1. Even though there are contradictions and discrepancies between the evidence of P.Ws.1 to 3, they are only minor contradictions. P.Ws.1 to 3 spoken about the incident on 17.11.2013 and the alleged occurrence taken place on 18.11.2013 at 7.30 a.m. and also spoken about giving the complaint by P.W.1 who was admitted in the hospital. The contradictions pointed out by the learned counsel for the appellants are only minor contradictions and they are not major contradictions which will not affect the case of the prosecution. Even though there is a motive and there are counter cases filed against the P.W1/complainant, but the prosecution has established its case that due to motive, the appellants along with other accused have scolded P.W.1 and assaulted him with dire consequences and uttered his caste name. Therefore, mere motive is not a sole ground to discard the evidence of eyewitnesses who have spoken about the occurrence.

20. Further, the learned counsel for the appellant would submit that in the complaint, P.W.1 has not stated that the appellant in Crl.A.No.486/2019 -A-7 has uttered the caste name. Even though a reading of the complaint and the FIR would show that it is not specifically mentioned that A-7scolded by uttering the caste name, it is seen that he has scolded with filthy language. Further PW.1 has clearly stated in his evidence that A-7 uttered the caste name. Though FIR is not an encyclopedia, during the investigation, the witnesses have spoken about the occurrence and after the investigating officer found the materials for the same, on the basis of the said materials, charges were framed. In his evidence also P.W.1 has clearly stated about both the appellants present in the place of occurrence and they have scolded with filthy language and threatened with dire consequences.P.W.2 also corroborated the same.



21. As already stated, even though there are discrepancies and contradictions between the evidence of P.Ws. 1 to 3, which are not material contradictions. Therefore, a perusal of the entire materials and evidence of P.Ws.1 to 3 and also the doctor evidence, P.W.5, Ex.P.1 complaint, Ex.P.3-Accident Register, Ex.P.4 - FIR, Ex.P.5-caste certificate clearly shows that the appellants belong to Vanniyar community and the complainant is Adi Dravida community. Therefore, from the evidence of complainant- P.W.1 and also other corroborative evidences, would clearly prove that the appellant in Crl.A.No.487/2019, A-2 has committed the offence u/s.147, 506(i) IPC and Section 3(1)(x) of SC/ST (POA) Act and also the trial court rightly convicted A-2 u/s. 147, 506(i) IPC and Section 3(1)(x) of SC/ST Act. However, taking into consideration the circumstances of the case and the occurrence, while confirming the conviction u/s.147 IPC, 506(i) IPC and u/s.3(1)(x) of SC/ST (POA) Act, the sentence imposed u/s.3(1)(x) of SC/ST (POA) Act against the Appellant in Crl.A.No.487/2019 A-2 is modified from one year to six months rigorous imprisonment.

22. As far as the appellant in Crl.A.486 of 2019/A7 is concerned, even though caste name of P.W.1 was not mentioned by A-7 in the complaint and FIR, P.W.2 and 3 have not corroborated the evidence of P.W.1 about mentioning the caste name of P.W.1 by A-7. However in the complaint and FIR, P.W.1 has clearly stated that A7 scolded him with filthy language and also he sustained injuries. Therefore, this court finds that A-7 committed the offence u/s.147, 506(i) IPC. Further, there is material to show that knowing fully well injured witness belongs to SC/ST community, A-7 scolded P.W.1 with filthy language and attacked him along with other accused persons. Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 reads as under:-

" 1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

x. intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. "

A reading of the above Section makes it clear that there is no need to utter the exact caste name, but intentionally insulting a member of a SC/ST community itself attracts Section 3(1)(x) of SC/ST (POA) Act. Hence, as far as the appellant in Crl.A.No.486/2019-A7 is concerned, while confirming the conviction imposed u/s.3(1)(x) of SC/ST (POA) Act, sentence alone is modified from one year to six months rigorous imprisonment and other findings are unaltered.



23. With the above modification, the Criminal Appeals are dismissed. Suspension of sentence already granted by this Court dated 01.08.2019 in Crl.M.P.Nos.10613 & 10627/2019 in Crl.A.Nos.486 & 487 of 2019 stand cancelled. The trial court is directed to secure the appellants for sufferance of the above sentence.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

NVSRI

To

1. The Special Judge,
Special Court for SC/ST (POA) Act Cases,
Villupuram.
2. The Deputy Superintendent of Police,
Ulundurpettai Sub Division,
Thirunavalur Police Station.
3. The Judicial Magistrate No.2, Ulundurpettai.
4. The Chief Judicial Magistrate, Villupuram.
5. The Public Prosecutor, High Court, Madras
6. The Section Officer,
Criminal Section,
High Court, Madras.

+2cc to M/s.T.K.S.Gandhi, Advocate, S.R.No.18141 & 18142

Judgment in
Crl.A.No.486 and 487 of 2019

AAB(CO)
TE (23/04/2021)