



Bail Slip

The accused viz., Gengai, w/o Pandurangan, aged about 60 years was ordered to be released on bail vide CrI.M.P.No. 13193 of 2019 in CrI.A.No.605/2019, dated 20-09-2019, on the file of the Hon'ble High court of madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.605 of 2019

Gengai

...Appellant/Accused

Versus

1.State represented by its
The Deputy Superintendent of Police,
PagandaiKootusalai Police Station,
Villupuram.
Crime No.136 of 2013.

...1st Respondent/Complainant

2.Periyasami
(Amended as per order dated 20.09.2019
in CrI.M.P.No.13592/19 in CrI.A.No.605 of 2019)

... 2nd Respondent

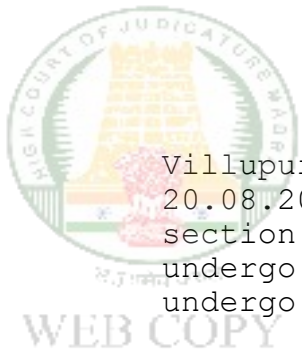
PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C seeking to set aside the judgment and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under SC/ST Act, Villupuram in Special Sessions Case No.207 of 2015 dated 20.08.2019 convicting the appellant for an offence under section 3(1)(x) SC/ST Act 1989 the appellant is sentenced to undergo 1 year R.I and to pay a fine of Rs.1,000/- in default to undergo further period of 3 months S.I.

For Appellant : Mr.M.Rajavelu

For R1 : Mr.R.Suryaprakash
Government Advocate

JUDGMENT

This Criminal Appeal has been filed seeking to set aside the judgment and sentence passed by the learned Sessions Judge, Special Court for Exclusive Trial of cases under SC/ST Act,



Villupuram in Special Sessions Case No.207 of 2015 dated 20.08.2019 convicting the appellant (A-2) for an offence under section 3(1)(x) SC/ST Act 1989 and the appellant is sentenced to undergo 1 year R.I and to pay a fine of Rs.1,000/- in default to undergo further period of 3 months S.I.

2.The respondent police registered a case against the appellant/A2 for the offence under section 294(b), 355, 506(ii) IPC r/w.section 3(1)(x) of the Schedule Caste/Schedule Tribe Act in Crime No.136 of 2013. After investigation, 1st respondent laid a charge sheet and the charge sheet was taken on file in P.R.C.No.19 of 2014. Thereafter committed the case to the Designated Court since the offence falls under section 3(1)(x) SC/ST Act. The learned Designated Court taken the case on file in Spl.S.C.No.207 of 2015. After completing the formalities, Judge, Designated court, framed the charge against the appellant and her husband/A1 for the offence under sections 294(b), 355, 506(ii) IPC r/w.section 3(1)(x) of the Scheduled Caste/Scheduled Tribe Act. During the trial, the husband of the appellant/ first accused died. Since the charge framed against the first accused were abated, after trial, the trial Court found the appellant guilty for the offence under section 3 (1)(x) SC/ST Act and sentenced to undergo 1 year R.I and to pay a fine of Rs.1,000/- in default to undergo further period of 3 months S.I. Challenging the said judgement of conviction and sentence, the second accused/appellant has filed the present appeal.

3. The learned counsel for the appellant would submit that the prosecution has not proved the case beyond all reasonable doubt. In the complaint itself, the defacto complainant has not stated the name of the persons those who have accompanied on the date of occurrence at the house of the appellant. Initially the complaint given against three persons and after investigation, one of the accused was deleted from the charge sheet since there was no prima facie allegation against that accused. Therefore, the complaint itself is false. He would further submit that there are material contradictions between the prosecution witnesses and the eye witness has not supported the case of the prosecution. During the cross examination, except official witnesses, other prosecution witnesses turned hostile and the prosecution failed to prove the case beyond reasonable doubt. The trial Court failed to consider the aspect that none of the witnesses have corroborated the evidence of defacto complainant and the judgement of the trial Court is liable to be set aside and appeal is to be allowed.

4. The learned Government Advocate would submit that there was an agreement between the defacto complainant and the appellant. Since the appellant refused to execute the sale deed, the defacto complainant went and approached the appellant along



with her husband and with villagers. The appellant has refused to execute the sale deed. The defacto complainant insisted to execute the sale deed. At that time, the appellant abused the defacto complainant with filthy language and also mentioned the caste name of the complainant and also threatened with dire consequences. Therefore, the defacto complainant filed the complaint before the police and the police also investigated the matter and laid a charge sheet against the appellant and her husband. During the trial, the husband of the appellant died. Eye witnesses P.Ws.4, 5 and 7 have corroborated the evidence of P.W.1/defacto complainant and also the prosecution has proved its case. Though the date on which the witnesses were examined in chief, the defense counsel did not cross examine the witnesses. Subsequently, the witnesses not supported the case of the prosecution. During the chief examination, all the witnesses have spoken about the alleged offence and also corroborated the evidence of the victim. Therefore subsequent deposition cannot be given much importance. Therefore, under these circumstances, the prosecution proved its case beyond all reasonable doubt. The trial Court also appreciated the entire evidence and convicted the accused.

5.Heard both sides and perused the records.

6.The case of the prosecution is that the defacto complainant had entered into an oral sale agreement with one Pandurangan, who is husband of this appellant and paid a sum of Rs.7,000/- as advance for buying 31 ½ of cents of land of Kuppusamy at Rs.7,000/- per cent on 02.09.2013. It is also averred in the petition that the defacto complainant should pay the balance amount and get the sale deed executed on 16.09.2013. Therefore, on 16.09.2013 at about 08.30 a.m., the defacto complainant went to the house of Pandurangan along with 4 important persons to pay the balance sale consideration. At that time, one Marudu @ Govindaraj, Pandurangan and this appellant refused to register the land and also refused to return the sale advance amount of Rs.7,000/-to the defacto complainant and abused the defacto complainant with filthy language and abused by using their caste name.

7. Subsequently after framing the charges and during the trial, in order to prove the case of the prosecution, on the side of the prosecution 14 witnesses were examined as P.W.1 to P.W.14 and 8 documents were marked as Ex.P1 to Ex.P.8. No material object was exhibited. After completing the examination of prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant. The appellant denied it as false and pleaded not guilty.

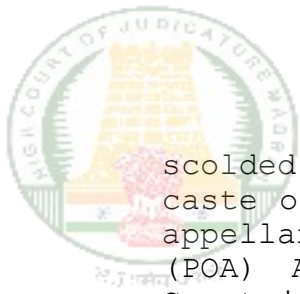


8. Appellate Court is a fact finding Court and it has to reappreciate the evidence and can give own reasons to form independent finding. In order to re-appreciate the evidence, this court gone through the entire materials.

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9. P.W.1, in his evidence has clearly stated that there was an agreement between him and the appellant. They went to the house of the appellant and questioned the same. Since they prolonged to execute the sale deed, they went along with middle men and questioned the same. At that time, the appellant and her husband abused the defacto complainant and others with filthy language and also threatened them with dire consequences and also they scolded the defacto complainant by mentioning the caste name. P.W.4 and P.W.7 are the persons who accompanied the defacto complainant at the time of occurrence. Thereafter the complainant came to be registered.

10. According to P.W.4, when the defacto complainant went to the appellant's house he also accompanied with the defacto complainant and clearly stated that when he went to the house of the appellant and questioned the appellant, they refused to execute the sale deed in favour of the defacto complainant but they tried to sell the same to the third party. Therefore, the defacto complainant along with others questioned the same. At that time, there was a quarrel between the appellant and the defacto complainant and he also noticed the same. Further P.W.5 also deposed that he also accompanied the defacto complainant when the defacto complainant went to the appellant's house. At that time, regarding the execution of the sale deed there was a quarrel between the appellant and the defacto complainant. At that time, the appellant and his wife abused the defacto complainant with filthy language by mentioning the caste name of the defacto complainant. P.W.7 also corroborated the same. Thus they corroborated the evidence of P.W.1. Even though it is stated by the learned counsel for the appellant that during the chief examination on the side of prosecution of the case, they have supported the case of the prosecution, but during the cross examination done after six months, the witnesses have not subsequently supported the case of the prosecution. However, at the time of chief examination, all the witnesses are stated to have accompanied the defacto complainant on the date of the occurrence. When the defacto complainant went to the appellant's house, they have categorically stated that the appellant abused the defacto complainant with filthy language by mentioning the caste name and all the witnesses supported the case of the prosecution. Evidence of hostile witnesses need not be discarded in totality, but, the portion of evidence in chief which supports the prosecution can be taken for consideration. The learned Special Judge, has come to the conclusion that in the public view, in the presence of other persons, the appellant



scolded the defacto complainant by mentioning the name of the caste of the defacto complainant. This Court also finds that the appellant has committed the offence under section 3(1)(x) SC/ST (POA) Act 1989. Therefore, conviction recorded by the trial Court is perfectly in order and there is no merit in the appeal. As far as sentence is concerned, the counsel for the appellant would submit that the age of the appellant is 70 years and husband also died and she is living with her daughter. Considering the mitigating circumstances, this Court only modifying the sentence as six months instead of one year, which will meets ends of justice.

11. With the above modification, this Criminal Appeal is dismissed. The trial court is directed to take steps so as to immure her in prison to serve out the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Deputy Superintendent of Police,
PagandaiKootusalai Police Station,
Villupuram.

2.The Public Prosecutor,
High Court of Madras.

3. The Sessions Judge,
Special court for Exclusive Trail
of cases under SC/ST Act,
Villupuram.

4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.Rajavelu, Advocate, S.R.No.10278

Crl.A.No.605 of 2019

CP(CO)
SB(15/07/2021)