



BAIL SLIP

The appellant/Accused namely Maregowdu S/O.Chensoodegowdu and Anandappa S/O.Chensoodegowdu were ordered to be released on bail vide Court order dated 25.09.2019 made in CRL.MP.No.13773 of 2019 in CRL.A.649 of 2019 passed by this Honourable High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.649 of 2019

1.Maregowdu

2.Anandappa

..Appellants/Accused 1 & 2

-Vs-

The State of Tamil Nadu
Rep. by Dy. Superintendent of Police
Denkankottai,
Krishnagiri District.

..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire record and proceedings in respect of the impugned Judgment and Conviction and Sentence passed by the learned Principal Sessions Judge, Krishnagiri dated 28.08.2019 in Sessions Case No.73 of 2018 and set aside the same, setting the appellants at liberty.

For Appellants : Mr.Richardson Wilson

For Respondent : Ms.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction and sentence, dated 28.8.2019, passed by the learned Principal Sessions Judge, Krishnagiri, in Sessions Case No.73 of 2018.



2. The respondent police registered a case in Crime No.144/2016 against the appellants for the offences punishable under Section 3(1)(x) of SC/ST (Prevention of Atrocities Act) and Section 506(1) of IPC. After completing the investigation, laid a charge-sheet before the District Munsif cum Judicial Magistrate Court, Denkanikottai, who has taken the case in P.R.C.No.17/2016. Thereafter, the case was committed to the Principal Sessions Court, Krishnagiri, who has taken the case on file in S.C.No.73/2018.

3. After completing the formalities, the learned Principal Sessions Judge framed charges against the 1st accused u/s.354 IPC, Section 3(1)(r) of SC/ST (Prevention of Atrocities) Act, 2015, u/s.506(i) IPC and u/s.3(2)(va) of SC/ST (POA) amendment Ordinance Act, 2015 and against the 2nd accused u/s.3(1)(r) and (s) of SC/ST (POA) Amendment Ordinance Act, 2015.

4. After trial, the learned Principal Sessions Judge convicted the 1st appellant/1st accused (i) for offence u/s.354 IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/-; (ii) for offence u/s.506(i) of IPC and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/-; (iii) for offence u/s.3(1)(r) and (S) of SC/ST Act, sentenced to undergo rigorous imprisonment for one year each and to pay a fine of Rs.2000/- (total Rs.4000/-); for the offence u/s.3(2)(Va) of SC/ST Act, sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/-. The 2nd appellant/2nd accused was convicted for the offence u/s.3(1)(r) and (S) of SC/ST Act and sentenced to undergo rigorous imprisonment for one year each and to pay fine of Rs.2000/- each (Rs.4000/-)

5. The case of the prosecution is that on the day of occurrence, when P.W.1 victim went through the Soodappa Land Mettu Kollai to attend nature's call at about 6 O' clock in the morning, the 1st appellant/1staccused went back by her side, hugged and dragged her. Since she raised voice, P.W.2 also shouted as to who is that. 1st accused shouted the victim and fled away from that place. P.W.1 informed about the occurrence to P.W.3 her uncle. P.W.3 stated not to inform the incident to her husband and he will look into the matter. Then P.W.3 went to the house of the 1stappellant/1staccused, but the 1st accused did not give respect to his words, so he approached A-2 brother of A-1. P.W.3 informed about the incident. A-2 told his brother is not a person like that and scolded P.W.3 in filthy language and humiliated him, knowing fully well that he belongs to Scheduled



Caste community. Since the accused persons not properly responded, P.W.3 approached the police. Since it was during election time, they lodged the complaint after one week. The respondent police initially registered the complaint u/s.3(1)(x) of SC/ST act and u/s.506(i) of IPC. After investigation, respondent police filed charge sheet. Since the offence falls under the provisions of SC/ST Act, case has been committed to the Designated Court. The learned Principal Sessions Judge/Designated Court, framed charges against the accused 1 and 2 as stated above. The appellants pleaded not guilty and claimed to be tried.

6. In order to prove the case, on the side of the prosecution, as many as 9 Witnesses viz., P.W.1 to P.W.9 were examined and 12 Exhibits viz., P.1 to P.12 were marked.

7. After completing the prosecution evidence, incriminating circumstances culled out from the prosecution witnesses were put before the appellants and questioned under Section 313 Cr.P.C., and they denied the same as false and pleaded not guilty. On the side of defence, D.W.1 and D.W.2 were examined and no document has been marked on the side of defence. After trial, the Designated court, passed the judgment of conviction and sentence as referred to above in the foregoing paragraph.

8. The learned counsel for the appellants would submit that there is no eye witness in this case. There are material contradictions between the evidence of prosecution witnesses. All are interested witnesses and there are material contradictions between the evidence of prosecution witnesses and the statement of defacto complainant. The occurrence is said to have taken place on 15.05.2016 but the complaint was given only after 10 days. In the complaint Ex.P.1, it is not stated that the appellant had mentioned the caste name whereas in the deposition, she has stated that the appellants mentioned the caste name. As far as P.W.2 is concerned, though according to the prosecution, P.W.2 is one of the eyewitnesses, but he has not seen the occurrence. However as per the evidence of P.W.1, P.W.2 is one of the eye witnesses. P.W.2 has not seen the occurrence and he is not supposed to be the eye witness. The evidence of P.W.1 and her statement u/s.161 Cr.P.C., made before the Police does not reflect anything about the occurrence. There are material contradictions between the prosecution witnesses. The place of occurrence is not in public view. Therefore, the offence alleged under Section 3(1)(r) and (s) of SC/ST (POA) Act would not attract. Though P.W.1 has stated that she went to attend nature's call, she has not stated that she went along with P.W.3. P.W.3 is also not the eyewitness for the



occurrence. As far as P.W.3's evidence is concerned, A-1 has committed the offence by hugging and dragging her. But there is no eye witness to corroborate the evidence of P.W.1. The testimony of PW1 is not trustworthy. It is highly doubtful. P.W.2 is also not an eyewitness. P.W.3 has given contradictory evidence. Prosecution has not proved its case beyond reasonable doubt. He has placed reliance on the citations :-

(1) (2020) 10 SCC 710 [Hitesh Verma Vs. State of Uttarakhand]

(2) (2004) 1 SCC 215 [Vidyadharan Vs. State of Kerala]

(3) (2004) SCC Online AP 1099 [Battina Dharma Rao Vs. The State]

(4) (2012) SCC Online Bom 418 [Hanumandas Vs. State of Maharashtra]

(5) (2012) BOMCR (Cr1) 2 Dhuplal Vs. State of Maharashtra

(6) AIR (1954) SC 711 [Ram Das Vs. State of West Bengal]

(7) (2017) 13 SCC 369 [Vineet Kumar Vs. State of Uttar Pradesh]

(8) (2008) 12 SCC 531 [Gorige Pentaiah Vs. State of Andhra Pradesh]

(9) (1967) SCC Online Mani 1 B.T.Sharma Vs. State of Manipur.

(10) (1963) SCC Online J&K 23 [Hajee Abdul Rehman Vs. Gulam Nabi]

(11) (2006) SCC Online AP 1187 [Tamminedi Bhaskara Rao Vs. State of A.P.]

(12) (2011) 2 SCC 532 [Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri]

(13) (2003) 1 SCC 465 [Joseph Vs. State of Kerala]

(14) (2012) 4 SCC 257 [Ramnaresh Vs. State of Chhattisgarh]

(15) (2002) 7 SCC 71 [Ganesh K.Gulve Vs. State of Maharashtra]

(16) (1981) 3 SCC 675 [Hari Obula Reddy Vs. The State of Andhra Pradesh]



(17) (1996) 11 SCC 248 [Madhusudhan Singh Vs. State of Bihar]

(18) (2005) 9 SCC 44 [Pandurang Sitaram Bhagwat Vs. State of Maharashtra]

WEB COPY

(19) (2003) 11 SCC 231 [Sadhu Ram Vs. State of Rajasthan]

(20) AIR (1959) SC 1012 [Tahsildar Singh Vs. State of U.P.]

(21) (1990) 3 SCC 190 [Vijayee Singh Vs. State of U.P.]

9. The learned Government Advocate (Criminal Side) would submit that P.W.1 is the victim and she went to attend nature's call. At that time, the appellant hugged her and dragged her. Immediately, she raised alarm and on hearing that, P.W.1 raised voice and P.W.2 asked who is that, then immediately the accused left the place. P.W.1 informed the incident to P.W.3. P.W.3 approached A-1; then he approached A-1's brother. A-1's brother shouted and humiliated him. P.W.1. Subsequently, P.W.1 gave complaint hence, delay occurred in filing complaint. They did not prefer the complaint immediately. P.W.1 is the victim and she has clearly deposed that 1st accused hugged and dragged her and when she raised voice, 1st appellant shouted her. The witness P.W.3 also clearly deposed about A-2's act of humiliating them by using their caste name. There is specific overtact against the appellants. The Tahsildar who issued the Community certificate was examined as P.W.6 Community Certificates was of P.W.1 marked as Ex.P.6 and 7. As per the certificate given by the Tahsildar, victim belongs to Scheduled Tribe Irular community. The appellants belong to Vokkalika. Thus the prosecution has proved the case beyond reasonable doubt. While going through the citations relied on by the appellant counsel, it is transpired that the citations are not applicable to the case on hand. The occurrence happened in public place. The victim went to attend nature's call. The facts of case in the cited judgment would show that it is not public place. It is different place. But in this case, it is not covered area. It is open space. Therefore, prosecution has proved the case beyond reasonable doubt. The trial court has appreciated the entire evidence and passed judgement of conviction and sentence, which warrants no interference.

10. Heard and perused the records.

11. This Court, being an Appellate Court, is a fact finding Court, which has to necessarily re-appreciate the entire evidence and give an independent finding.

12. The case of the prosecution is that on the date of occurrence, when P.W.1 victim went through the Soodappa Land



Mettu Kollai to attend nature's call, the 1st appellant/1staccused went back by her side, hugged and dragged her. Since she raised voice, P.W.2 also shouted and so 1st accused shouted the victim and fled away from that place. P.W.1 informed about the occurrence to P.W.3 her uncle. P.W.3 went to the house of the 1stappellant/1staccused, but the 1st accused did not give respect to his words, so he approached A-2 brother of A-1. P.W.3 informed about the incident. A-2 told his brother is not a person like that and scolded P.W.3 in filthy language and humiliated him, knowing fully well that he belongs to Scheduled Caste community. Since the accused persons not properly responded, P.W.3 approached the police and lodged the complaint after one week. The respondent police initially registered the complaint u/s.3(1)(x) of SC/ST act and u/s.506(i) of IPC. After investigation, respondent police filed charge sheet.

13. In order to prove the charges as framed against A-2, totally, 9 witnesses were examined. P.W.1 is the victim. Date of occurrence is 15.05.2016. She has given complaint only on 24.05.2016. She has given reason for delay in filing the complaint. Mere delay in filing the complaint is not fatal to the case of the prosecution. Unexplained delay is only fatal to the case of the prosecution. Admittedly, being a lady she should also think about her future and reputation of the family.

Even according to P.W1 and P.W.3, they advised P.W.1 not to inform about the occurrence or whatever happened, since it is involved of offence under Section SC/ST (Prevention of Atrocities) Act, if something happened, communal clash is also possible. In rural areas, if something like this happened to somebody, generally they approach elderly persons of that village and thereafter only, they will slowly approach the police. It is further stated that during election time, complaint could not be given. This court is satisfied with the reasons given by the defacto complainant for delay in filing the complaint.

14. PW1 stated that she had gone to attend nature's call. It is the place where the entire village attend nature's call. Evidence of P.W.1 would submit that at that time, first appellant -A1 all of a sudden came there and hugged and dragged her to some extent. Immediately she raised her voice. Hearing the voice of P.W.1, accused ran away. Therefore, the learned counsel for the appellant would submit that there are contradictions in respect of evidence of the prosecution witnesses and the averments made in the complaint. FIR is not an encyclopedia. It cannot speak of minute details. It must contain some essential and relevant details of the incident. It is only stated that she informed the police about the occurrence therefore, non mentioning of the other details of the case will



not be fatal to the case. Every minute detail need not be mentioned in FIR. P.W.3 has corroborated the evidence of P.W.1. Though P.W.1 has not mentioned about P.W.2, P.W.2 is not the eyewitness of the occurrence. There is no reason to discard or disbelieve the evidence of P.W.1. The defence taken by the appellant is civil dispute. But they have not established the motive. The said defence is taken only to escape from the clutches of law. Such defence has not been substantively established on the side of appellant. Therefore, the evidence of P.W.1 is cogent. Therefore, the prosecution has proved its case.

15. There is no quarrel with the settled proposition of law laid down by the Supreme Court. The citations referred to by the learned counsel for the appellant has no application to the case on hand since the facts involved therein is entirely different from the facts of the present case. P.W.1 victim has given the complaint. She was examined and the prosecution has substantiated the charges. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. Every criminal case has to be decided on the basis of facts and evidence available and not on precedence. Therefore, citations referred to by the learned counsel for the appellant, are not applicable to the present case on hand.

16. In the complaint, it is not stated that A-1 mentioned the caste name. However, in the public place, the first appellant humiliating the victim, by hugging and dragging her is proved. There is no eyewitness to show that A-1 mentioned the caste name in the public view. Therefore, conviction u/s.3(1)(s) of SC/ST Act is set aside.

17. It is not stated in the complaint that A-2 mentioned the caste name. But knowing fully well that the victim belongs to SC/ST community, humiliated and shouted the victim girl in the public view.

18. In view of the above reasonings, this court on a careful perusal of the evidence of P.W.1 victim and P.W.3 found that the first appellant/A-1 committed the offence punishable under Sections 354 and 506(i) of IPC, 3(2)(Va) of SC/ST Act and u/s.3(1)(r) of SC/ST Act. But no offence is made out u/s.3(1)(s) of SC/ST Act against both appellants. Hence, conviction u/s.3(1)(s) of SC/ST Act against appellants is set aside. Sentence awarded by the Principal Sessions Judge, Krishnagiri is confirmed.

19. With the above modification, this Criminal Appeal is



dismissed. The trial court is directed to take appropriate steps to secure the presence of the appellants to undergo the remaining period of sentence.

WEB COPY

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

nvsri

To

1. The Principal Sessions Judge,
Krishnagiri.
2. The Deputy Superintendent of Police,
Denkanikottai,
Krishnagiri District.
3. The District Munsif cum Judicial Magistrate,
Denkanikottai.
4. The Public Prosecutor,
High Court, Madras.
5. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to M/S.Richardson wilson, Advocate, S.R.No.22358

Cr1.A.No.649 of 2019

CP(CO)
SU(26/07/2021)