

BAIL SLIP

The Appellant/Accused, namely Muthukrishnan was directed to be released on bail as per order dated 18.10.2019 in CRL MP.NO.14828/19 IN CRL A.NO.712/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.712 of 2019

Muthukrishnan ... Appellant/2nd Accused
-Vs-

The State of Tamil Nadu,
Rep. by Deputy Superintendent of Police,
Gingee Sub Division,
Ananthapuram Police Station, Cr.No.195 of 2016,
Villupuram District. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to call for the records relating to the proceedings in Special S.C.No.27 of 2017 on the file of the learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Schedule Caste and Schedule Tribe Prevention of Atrocities Act 1989 Villupuram and set aside the order of conviction dated 03.10.2019 and set the appellant at liberty.

For Appellant : Mr.M.Devaraj

For Respondent : Ms.T.P.Savitha,
Government Advocate [Crl. Side]

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed by the learned Sessions Judge, Special Sessions Court for exclusive trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram in Special S.C.No.27 of 2017, dated 03.10.2019.

2.The respondent Police have registered a case in Crime No.195 of 2016, for offence under Sections 147, 294(b), 352 and Section 3(1)(r), 3(1)(s) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 against the appellant/A2 and A1 on the complaint (Ex.P1) given by the defacto complainant (PW1). After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Sessions Court for exclusive trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram and the same was taken on file as Special S.C.No.27 of 2017.

3.After completing the formalities under Section 207 Cr.P.C., since there was a prima facie material to frame charges against the appellant/A2, the learned Sessions Judge, framed charges under Sections 352, 506(i) IPC and Section 3(1) (r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

4.After completing the trial and hearing of the arguments advanced on either side and also considering the oral and documentary evidence, the trial Judge found the appellant/A2 guilty for offence punishable under Section 352 IPC and imposed a fine of Rs.500/-, in default to undergo one month Simple Imprisonment and for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, the appellant was convicted and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months Simple Imprisonment. The appellant was acquitted for the offence under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and A1 was acquitted for the offence under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and 506(i) IPC.

5.Challenging the above said Judgment of conviction and sentence, the appellant/A2 has filed the present appeal before this Court.

6.The learned counsel appearing for the appellant/A2 would submit that the ingredients of the offence under Section 352 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 are not attracted against the appellant and there is no material evidence for the same. The learned counsel would further submit that the prosecution has failed to prove the place of occurrence and in respect of the same, the deposition of the prosecution witnesses are totally contradicting each other. In such a case, while acquitting the appellant under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, he should have been acquitted from the charges for the offence under Section 352 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of woman Act, 1998. The

occurrence alleged to have taken place in the house of PW1 and not in the public place and therefore, Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 would not attract in this case. Further, there was a counter complaint against the defacto complainant (PW1), which was registered in Crime No.194 of 2016, for offence under Sections 294(b), 352 and 506 (i) IPC. Therefore, due to previous enmity and in order to escape from the complaint given by the appellant, the defacto complainant (PW1) foisted a false case against the appellant/A2. The learned trial Judge failed to consider the same and also erroneously convicted the appellant. Since the learned trial Judge acquitted A1 from all the charges, the learned trial Judge ought to have acquitted the appellant under Section 352 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. Since PW1 to PW3 are from the same family and same village and they are interested witnesses, their evidence could not be considered and the trial Court ought to have disbelieved their evidence.

7.The learned counsel for the appellant would further submit that there are material contradictions in the prosecution witnesses, which would go to the root of the case of the prosecution. Without any valid reason, the learned trial Judge convicted the appellant and it would have done only on presumption and assumption. Hence, he prayed for acquittal.

8.Ms.T.P.Savitha, Government Advocate (Crl. Side) appearing for the respondent Police would submit that the defacto complainant was examined as PW1. Her son and her daughter-in-law were examined as PW2 and PW3. PW1 to PW3 belong to the Scheduled Caste Community and the accused/A1 and A2 belong to Hindu Vanniyar Community. PW1 to PW3 during chief examination have clearly deposed that on 08.09.2016, at about 01.00 p.m., one Manikandan asked PW1 about Rajavel, for which she informed that Rajavel was sleeping. Thereafter, the said Manikandan had gone and come along with A1 and abused PW1 by using her caste name and also attacked her in cheek and then, the appellant came to the scene of occurrence of along with 20 persons and attacked the son (PW2) of PW1/defacto complainant and also abused him by using caste name in public view. When the defacto complainant (PW1) questioned the act of the appellant, the appellant also abused the defacto complainant using her caste name and also dragged her near Kannimar Temple and attacked in her cheek.

9.The learned Government Advocate (Crl. Side) would further submit that the evidence of PW1 to PW3 are corroborated to each other and there is specific overtact against the appellant. Though the learned trial Judge acquitted the appellant for the offence under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, rightly convicted him under Section 352 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. Further, in the

counter complaint filed by the accused against the defacto complainant and her son (PW1 & PW2), they were convicted by the learned Judicial Magistrate, Gingee in S.T.C.No.767 of 2017 for offence under Section 352 IPC and imposed a fine of Rs.300/- and for offence under Section 506(i) IPC, imposed a fine of Rs.500/-. Therefore, 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 no merit in the appeal and it is liable to be dismissed.

10.Heard the learned counsel appearing for the appellant and the learned Government Advocate [Cr1. Side] appearing for the respondent and also perused the materials available on record.

11.The case of the prosecution is that the defacto complainant/PW1 belongs to Scheduled Caste Community and the appellant/A2 and A1 belong to Hindu Vanniyar Community. Prior to the occurrence, there was money transactions between the appellant and the defacto complainant. On 08.09.2016, at about 01.00 p.m., one Manikandan asked PW1 about Rajavel, for which she informed that Rajavel was sleeping. Thereafter, the said Manikandan had gone and come along with A1 and abused PW1 by using her caste name and also attacked in cheek and then, the appellant came to the scene of occurrence along with 20 persons and attacked the son (PW2) of PW1/defacto complainant and also abused him by using caste name in public view. When the defacto complainant (PW1) questioned the same, the appellant dragged her to Kannimar Temple and attacked and abused her by using caste name. Hence, she lodged a complaint (Ex.P1) before the respondent Police.

12.Based on the complaint (Ex.P1) given by the defacto complainant/PW1, an FIR in Crime No.195 of 2016 was registered for offence under Sections 147, 294(b), 352 and Sections 3(1) (r), 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, against the appellant/A2 and A1. After completing investigation, the respondent police laid a charge sheet before the learned Sessions Judge, Special Sessions Court for exclusive trial of cases under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram and the same was taken on file in Special S.C.No.27 of 2017.

13.During the trial, on the side of the prosecution, as many as 12 witnesses were examined as PW1 to PW12 and 10 documents were marked as Exs.P1 to P10 and no material object was exhibited. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the prosecution witnesses put before the accused, they had denied as false. On the side of the defence, 1 oral and 8 documentary evidence were produced.

14. After considering the evidence on record and hearing on either side, the learned Sessions Judge, by judgment dated 03.10.2019 in Special S.C.No.27 of 2017, convicted and sentenced the appellant/A2 and A1 as stated above.

15. 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. Accordingly, this Court appreciated the entire evidence and materials available on record to give independent finding.

16. In this case, there are totally two accused, in which, the appellant is A2. After completion of trial, A1 was acquitted from all the charges levelled against him and A2, the present appellant herein was found guilty for offence punishable under Section 352 IPC and imposed to pay a fine of Rs.500/-, in default to undergo one month Simple Imprisonment and for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, the appellant to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months Simple Imprisonment. The appellant was acquitted under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

17. In this case, in order to prove the case of the prosecution, 12 witnesses were examined as PW1 to PW12, out of which the defacto complainant was examined as PW1. The eye witnesses to the occurrence are PW1 to PW3.

18. The defacto complainant/PW1 in her evidence has deposed that the appellant/A2 came to her house along with 20 persons and beaten her son/PW2 on his cheek. When she questioned the same, he abused her in filthy language and uttered her caste name and pulled her saree and dragged her to Kannimar Temple and beaten her in cheek and again uttered her caste name in public view. Hence, she lodged a complaint to the respondent Police narrating the entire incident. The son of PW1 was examined as PW2. PW2 in his evidence has deposed that one Manikandan asked PW1 about Rajavel, she informed that he was sleeping. Thereafter, the said Manikandan had gone and come along with A1 and started abusing PW1 by using her caste name. When PW2 questioned A1, A1 also abused PW2 in filthy language by using caste name. Then, the appellant came along with 20 persons and attacked PW2 in his neck and cheek and when PW1 questioned the appellant, the appellant attacked PW1 and pulled her saree and dragged her to Kannimar Temple and attacked her. Thereafter, the defacto complainant (PW1) and her son (PW2) informed the incident to the elders of village, but no response from them. The daughter-in-law of PW1 and wife of PW2 was examined as PW3. PW3 has deposed that the appellant beaten her husband and when her mother-in-law questioned the same, he pulled her saree and dragged her to Kannimar Temple and attacked her and abused her by using her

caste name. The evidence of PW1 to PW3 reveals the specific overtact against the appellant and their evidence are corroborated to each other.

19. Even though the learned counsel for the appellant contended that the place of occurrence has not proved and the alleged occurrence is said to have taken place in a private place, the evidence of PW1 to PW3 shows that PW2 was beaten by the appellant in the house and when the defacto complainant (PW1) questioned the same, the appellant pulled her saree and dragged her to Kannimar Temple where he attached her and also abused by using the caste name. The occurrence place is a Temple which is public place and hence, the Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act attracted against the appellant. For better appreciation Section 4 of Tamil Nadu Prohibition of Women Harassment Act is extracted hereunder:-

"4. Penalty for Harassment of Women-Whoever commits or participates in or abets harassment of women in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theater, part, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees."

20. The trial Court has found that no independent witness supported the case of the prosecution in respect of the offence under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and acquitted him from the said charges and found that there were incriminating circumstances against the appellant for offence under Section 352 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act and convicted him.

21. A perusal of the evidence of PW1 to PW3, they have clearly stated that the appellant scolded the defacto complainant (PW1) and PW2 in filthy language and also uttered them by using their caste name in public view. The trial Court failed to appreciate the same and acquitted the appellant under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, neither the prosecution, nor the defacto complainant have filed any appeal in respect of the acquittal of the appellant for the said offences and this Court is not inclined to interfere with the same.

22. Thus, this Court as an appellate Court and a fact finding Court, considered the grounds raised by the appellant and also appreciated the entire materials available and found that the appellant has committed the offence under Section 352

of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. Further, there is no reason to disbelieve or discard the evidence of PW1 to PW3, even though they belong to same family. Prior to the occurrence, the accused have filed a case in S.T.C.No.767 of 2017 against PW1 and PW2 before the learned Judicial Magistrate, Gingee. The learned Judicial Magistrate, by judgment dated 18.07.2017 (Ex.D8) rendered as follows:-

"Accused is present. Copies furnished substance of accusation U/s.352, 506(i) IPC explained to. Accused pleaded guilty. Both Accused convicted U/s.352, 506(i) IPC and each accused sentenced U/s.352 IPC to fine Rs.300/- idsi for 1 week sentenced U/s.506(i) IPC to fine Rs.500/- idsi for 1 week fine for each accused Rs.800/-."

23.PW1 and PW2 admitted that they were paid the fine amount as per the Judgement of the learned Judicial Magistrate, Gingee which clearly shows that the occurrence had taken place on the said date. Hence, this Court cannot disbelieve the evidence of the prosecution witnesses PW1 to PW3 and their evidences are very natural and trustworthy. Immediately after the occurrence, the defacto complainant (PW1) and her son (PW2) had gone and informed to the villagers about the incident, but the villagers had not taken any action against the appellant and they supported the persons who are having men and muscle power and also in communal power. The evidence of interested witnesses is found to have creditworthiness, the conviction could be based on an uncorroborated testimony. In cases of this nature, the independent witness mostly will not support the case of the prosecution. If the evidence of the relative witnesses are cogent, credible and trustworthy, the conviction is permissible.

24.On combined reading of the evidence of PW1, PW2, PW3 and other documents available, the prosecution has established that the appellant has committed the offence under Section 352 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and the trial Court has rightly appreciated the oral evidence and other materials and convicted the appellant.

25.Hence, this Court can safely come to the conclusion that the appellant has committed the offence. In the light of the above discussion, this Court does not find any merit in this appeal and the appeal is liable to be dismissed.

26. Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed. The trial Court is directed to secure the appellant to undergo remaining period of sentence if he is outside.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Sessions Court for exclusive trial of cases
under the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, 1989, Villupuram.
2. The Deputy Superintendent of Police,
Gingee Sub Division,
Ananthapuram Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Devaraj, Advocate SR.No. 16303

CrI.A.No.712 of 2019

SVI (CO)
A.SK(06.07.2021)

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