

BAIL SLIP

Vetrivel S/o. Selvam Petitioner/Accused in CRL.A.No.784 of 2019 in S.C.No.298 of 2016 on the file of Principal Sessions Judge, Salem was enlarged on bail in and by the order of this Court dated 18/11/2019 in CRL.MP.No.16776 of 2019 in CRL.A.No.784 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.784 of 2019

Vetrivel

...

Appellant

Versus

State represented by its
The Deputy Superintendent of Police,
Omalur Sub Division,
Salem District.

(Crime No.785 of 2014, Omalur Police Station) ... Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) Cr.P.C seeking to set aside the judgement in S.C.No.298 of 2016, on the file of the Principal Sessions Judge, Salem dated 31.10.2019, convicting the appellant herein to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo Rigorous Imprisonment for Nine Months for the offence under section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as amended for the Ordinance, 2014 and also convicted and sentenced to undergo Rigorous Imprisonment for Three years and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo Rigorous Imprisonment for Nine months for the offence under section 3(1)(s) of the Schedules Castes and Schedules Tribes (Prevention of Atrocities) Act as amended for the ordinance 2014 and also convicted and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default, to undergo RI for three months for the offence under section 323 IPC r/w.3(1) (va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as amended for the ordinance 2014 and allow this Criminal Appeal.

For Appellant : Mr.D.Baskar
For Respondent : Mr.R.Suryaprakash
Government Advocate

O R D E R

This Criminal Appeal has been filed seeking to set aside the judgement in S.C.No.298 of 2016, on the file of the Principal Sessions Judge, Salem dated 31.10.2019.

2.The respondent police registered a case against the appellant for the offence punishable under section 3(1)(r), 3(1)(s) and section 323 IPC r/w.section 3(1)(va) of the Schedule Caste/Schedule Tribe (Prevention of the Atrocities Act as amended for the Ordinance 2014. After the investigation, they laid charge sheet before the District Munsif cum Judicial Magistrate, Omalur and the same was taken on file in P.R.C.No.29 of 2014 and after completing the formality, committed the case to the Designated Court(Principal Sessions Judge, Salem) and the learned Sessions Judge after completing formality taken the case on file in S.C.No.298 of 2016 and after framing charges and trial, convicted the appellant as under:

(i) In respect of first charge against the accused he is convicted for for the offence punishable under section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as amended for the Ordinance 2014 and sentenced to undergo Rigorous Imprisonment for three years and shall pay a fine of Rs.1,000/- in default shall undergo Rigorous Imprisonment for nine months.

(ii) In respect of second charge against the accused he is convicted for the offence punishable under section 3(1)(s) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act as amended for the Ordinance 2014 and sentenced to under go Rigorous Imprisonment for 3 years and shall pay a fine of Rs.1,000/- in default shall undergo Rigorous Imprisonment for 9 months.

(iii) In respect of third charge against the accused he is convicted for offence punishable under section 323 IPC r/w.3(1)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as amended for the ordinance 2014 and sentenced to undergo Rigorous Imprisonment for one year and shall pay fine of Rs.1,000/- in default shall undergo Rigorous Imprisonment for

3 months. Challenging the said judgment of conviction and sentence the appellant is before this Court.

3. The learned counsel for the appellant would submit that there is a delay in filing the case but no proper explanation. He further submitted that the date of occurrence was on 30.08.2014 at about 4.00 p.m., on the very same day, the investigating officer was said to have been appointed by the competent authority, which is not at all possible and the investigating officer was not properly authorized to investigate the case and the Investigating Officer without any authority has conducted the investigation. Therefore this itself go to the root of the case and fatal to the case of the prosecution and the allegations not fall under section 3(1)(r), 3(1)(s) of the Scheduled Caste/Scheduled Tribes (POA) amendment Ordinance 2014 and the learned designated Court failed to apply its mind and also failed to appreciate the evidence which does not establish any ingredients of section 3(1)(r), 3(1)(s) and section 323 r/w.3(1)(va) of SC/ST of (Prevention of Atrocities) Act as amended for the Ordinance, 2014 and it would not attract any offence. Though P.W.4 is stated to have been an eye witness, he has not supported the case of the prosecution and the place of alleged occurrence is not within the public view but it is within four walls of the building. Therefore the place of alleged occurrence is not public place, therefore the Act would not attract. The learned Sessions Judge failed to take into account all the factors and convicted the appellant without any material.

4. The defacto complainant was a tenant under the uncle of the appellant and the dispute arose regarding vacating premises by the tenant. The prosecution case also admitted that there was dispute between landlord and tenant with regard to vacate the premises. Therefore, in order to avoid action, P.W.1 foisted false case against the appellant and the learned trial Judge failed to consider and appreciate the evidence which warrants interference.

5. The learned Government Advocate would submit that the complainant P.W.1 clearly narrated the facts that when she was in her tailoring shop, the accused came to her shop and abused her against her community and also assaulted P.W.1 on her cheek and uttered words degrading her caste by saying எங்கடி தேவடியா கண்டார ஒலி உன் புருஷன் போயிட்டான், எங்க பெரியப்பா கடையில் கடை வைத்து கொண்டு எங்ககிட்டையே தகராறுக்கு வந்தீங்க ஒழுங்கா கடையை காலி பண்ணுங்க", P.W.3 is one of the eye witness who was present at the time of occurrence nearby shop and also seeing the appellant and the victim P.W.1 and also hearing the voices, stated that the appellant scolded the victim using caste name. Therefore the evidence of P.W.3 corroborated

the evidence of P.W.1. P.W.6 and P.W.7 partly turned hostile but supported the case of the prosecution to the extent by stating that both the appellant and the victim were in the occurrence place. P.W.7 also corroborated the same with the evidence of P.W.1 and P.W.3. The prosecution has proved the case beyond reasonable doubt but there was delay in sending the FIR. The Court on the sole ground of delay in sending the FIR, cannot disallow the case of the prosecution. Based on the complaint given by P.W.1, the case of the prosecution was properly authorized by appointing a competent investigating officer and as such, there is no procedural violation and there is no violation on the mandatory provisions of the Special Act. Therefore, prosecution proved its case beyond reasonable doubt and the trial Court appreciates the evidence in the right way and passed the judgment, therefore, the criminal appeal is liable to be dismissed.

6. Heard and perused the records.

7. The case of the prosecution is that the victim and her husband were running a tailoring shop in a rented building which belongs to one Chinnathambi. The accused is the brother of one Mekala who is the daughter of Chinnathambi's brother Selvam. The accused belongs to Navithar community and is not a member of the SC/ST. There was a quarrel between the children of victim and Mekala. When victim questioned Mekala, the accused came in support of Mekala and quarreled with victim. The said accused is running a saloon shop. In view of the above said quarrel, the accused was insisting the victim to vacate the shop.

8. It is further alleged in the petition that on 30.08.2014 at about 4. p.m., in front of the tailoring shop when the victim was inside the building which belonged to Chinnathambi, the accused who is not a member of Scheduled Caste and Scheduled Tribe, abused and intimidated the witness/victim who is a member of Scheduled Caste in obscene words and also insulted her by mentioning the caste name with an intention to humiliate the victim within public view who is a member of the SC. Hence the complaint.

9. In order to prove the case of the prosecution, on the side of the prosecution, 12 witnesses P.W.1 to P.W.12 were examined and 8 documents were marked as Ex.P1 to P8. No material object was exhibited. After completing the examination of prosecuting witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put to the appellant, who denied it as false and pleaded not guilty. On the side of the appellant, no oral and documentary evidence was produced. The Trial Court after perusing the entire materials on record, convicted the appellant and sentenced as narrated in

the preceding paragraph.

10. The appellate Court as fact finding Court in order to give independent finding has to re appreciate the entire evidence. A reading of the evidence on the side of the prosecution, would show that the defacto complainant was examined as P.W.1 in this case. She has clearly narrated the occurrence place and that the appellant beaten the victim and also uttered the name of the caste of the victim. P.W.3 who was present at the time of occurrence also clearly deposed that he was nearby in the occurrence place and he stated that the appellant beaten the defacto complainant and uttered the name of the caste of the victim. P.W.6 and 7 also has clearly corroborated the evidence of P.W.1 and P.W.3. P.W.6 also has stated that at that time, he was in the nearby occurrence place wherein, the defacto complainant and appellant had dispute. Therefore from the evidence of P.W.9 and 10 and Ex.P4 and P5, it is apparent that the defacto complainant belongs to the Scheduled Caste and the appellant belongs to MBC. Therefore, from the evidence of P.W.1, P.W.3, P.W.7, P.W.9 and P.W.10, the prosecution has proved the case beyond all reasonable doubt. The place of occurrence is a public place. Though the learned counsel for the appellant would submit that it is within the four walls, it cannot be accepted because the place of occurrence is tailoring shop which is a public place and people would come and go and also at the time of occurrence P.W.1 and 3 are present; the appellant uttered the name of the caste of the victim and beaten the victim. The doctor one who gave treatment to the victim was examined as P.W.8, copy of the accident register marked as Ex.P3 which show known person assaulted with hand. The injury sustained by the victim is simple in nature. Therefore, the prosecution has proved that the appellant beaten the victim and also with the intention mentioned the caste name of the victim and degraded the caste. Therefore, under these circumstances, this Court, while appreciating the evidence independently, is of the view that the appellant has committed the offence under section 3(1)(r), 3(1)(s) and section 323 IPC r/w. section 3(1)(va) of the Schedule Caste/Schedule Tribe (Prevention of the Atrocities Act as amended for the Ordinance 2014 and there is no merit in the appeal and it is liable to be dismissed.

11. The conviction imposed by the trial court is confirmed. However, considering the facts and circumstances of the case, the quantum of the sentence imposed by the trial court is modified from 3 years to 2 years which will meet ends of Justice. Since this court by order dated 18.11.2019, granted suspension of sentence by imposing certain conditions and the appellant was enlarged on bail, the trial court is directed to

take appropriate steps so as to arrest him to serve out the remaining period of sentence.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Principal Sessions Judge,
Salem.
2. The Deputy Superintendent of Police,
Omalur Sub Division,
Salem District.
3. The Public Prosecutor,
High Court of Madras.
4. The District Munsif cum Judicial Magistrate,
Omalur

+1cc to Mr.R.THAMARAISELVAN, Advocate, S.R.No.9271

Crl.A.No.784 of 2019

SS(CO)
CT(13/07/2021)

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