



Bail Slip

A.Rathinavel S/o. Arjunan Pettitioner/Appellant was released on bail by the order of this Houb'ble Court dated 11/07/2016 made in Crl.MP(MD).5519 Of 2016 in Crl.A(MD).249 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED : 25.06.2021

JUDGMENT PRONOUNCED : 29.10.2021

CORAM:

HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

Crl.A.(MD) No. 249 of 2016

A.Rathinavel

S/o. Arjunan

: Appellant / Sole Accused

-vs-

State represented by
The Inspector of Police,
Kadaladi Police Station,
Ramanathapuram District.
Crime No.102 of 2013

: Respondent / Complainant

PRAYER:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the impugned Judgment passed by the learned Principal Sessions Judge, Ramanathapuram in Spl. S.C.No.102 of 2014 dated 13.06.2016.

For Appellant : Mr.C.Arul Vadivel @ Sekar

For Respondent : Mr.T.Senthil Kumar

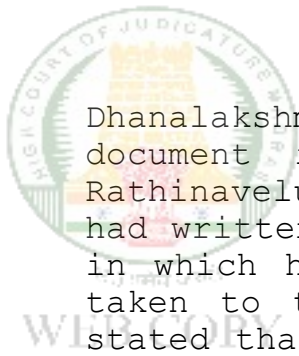
Government Advocate (Crl.Side)

JUDGMENT

This Criminal Appeal has been filed against the Judgment and Conviction dated 13.06.2016 by the learned Sessions Judge, Ramanathapuram in Spl.S.C.No.102 of 2014.

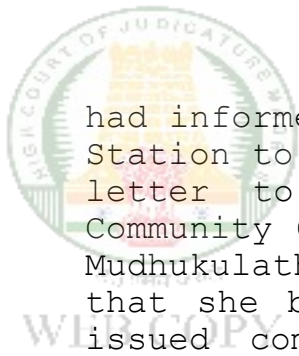
2. The brief facts which are relevant for consideration in this appeal are as follows:

2.1. P.W-1-Nallal claimed that she has her family property in Punavasal Lake within the local limit of Kadaladi Police Station and that to insure the crop, she had approached the Village Administrative Officer for the land in Survey No.2812 measuring an extent of 3.62.00 ares. The Village Administrative Officer replied that the property in Survey No.2812 measuring an extent of 3.62.00 ares belonged to Dhanalakshmi, W/o. Thangapandi, Appanur Village based on Patta No.1246. On 16.12.2013 by around 1.30.p.m., P.W-1 along with her relatives viz., P.W-2-Mookamal, P.W-3-Kanagaraaj and P.W-4-Tmt.Selvam, P.W-5-Senthooran had gone to the residence of



Dhanalakshmi and sought the help of Dhanalakshmi to execute a document in favour of P.W-1. The father of Dhanalakshmi, Rathinavelu, who was the erstwhile Village Administrative Officer had written a statement on the reverse of Patta belonging to P.W-1, in which he had obtained the signature of Dhanalakshmi. This was taken to the present Village Administrative Officer for which he stated that based on the statement written on the reverse of Patta belonging to P.W-1, the crop insurance cannot be executed. Dhanalakshmi had to execute a document to change the Patta in favour of P.W-1. Only then, crop insurance can be executed. Therefore, P.W-1 had gone to the residence of Dhanalakshmi and informed about the same. P.W-1 requested Dhanalakshmi to come to the office of Tahsildar and to transfer the property which is wrongly entered in the Patta of Dhanalakshmi which actually belonged to the family of P.W-1. At that time, the father of Dhanalakshmi, Rathinavel, who was a former Village Administrative Officer himself stated that for the property exceeding 4 Acres, P.W-1 and her family members have to execute a deed in favour of Dhanalakshmi and then, they have no objection in transferring the Patta for the 4 Acres in the name of P.W-1 and her family members. To this suggestion of father of Dhanalakshmi, P.W-1 and her family members P.W-2 to P.W-5 refused. At that time, the father of Dhanalakshmi, Rathinavel shouted at them stating that **"You Palla people who had not been in the village for years together cannot seek to execute the document for the property which you do not own, if you stand in front of my house any further, You will be killed, get out of this place"** and he came running aggressively to attack them. On seeing this, P.W-1 to P.W-5 came running out of his house. Rathinavel shouted at them. Dhanalakshmi and her husband Thangapandi were available at their house and they too attempted to attack them. Therefore, P.W-1-Nallal approached the Inspector of Police, Kadaladi Police Station and lodged a complaint to that effect. P.W-9-Senthilkumar, the then Sub Inspector of Police, Kadaladi Police Station, on receipt of the complaint of Nallal under Ex.P-1, registered a case in Cr.No.102 of 2013 under Section 506 (i) of IPC r/w. Section 3 (1) (x) of SC/ST (Prevention of Atrocities Act) and forwarded the original complaint under Ex.P-1 and original FIR under Ex.P-6 to the Court of the learned Judicial Magistrate, Mudhukulathur and the copies were sent to the higher Officials particularly Deputy Superintendent of Police, Mudhukulathur and to the Superintendent of Police, Ramnad.

2.2. On receipt of the FIR under Ex.P-6, Superintendent of Police had issued proceedings under Ex.P-7 appointing P.W-10- Deputy Superintendent of Police under SC/ST (Prevention of Atrocities Act) for investigating the matter. Based on Ex.P-6 and Ex.P-7, P.W-10 proceeded with the investigation, he had visited the place of occurrence i.e., the residence of Dhanalakshmi and prepared the Observation Mahazar under Ex.P-8 and Rough Sketch under Ex.P-9 in the presence of witnesses P.W-5-Senthooran and P.W-6- Muniyasamy and went to the residence of P.W-1 and recorded their statements. He



had informed the team under the Inspector of Police, Kadaladi Police Station to arrest the accused-Rathinavel and also sent a requisition letter to Tahsildar, Mudhukulathur and Kadaladi regarding the Community Certificate of P.W-1 and said Rathinavel. The Tahsildar, Mudhukulathur had issued community certificate for P.W-1 stating that she belonged to Palla Community. The Tahsildar, Kadaladi had issued community Certificate stating that the said Rathinavelu belonged to Maravar Community. He had recorded the statements of P.W-1 to P.W-5 and statements of the P.W-8-Raviraj-Tahsildar, Kadaladi and P.W-7-Mohan-Tahsildar, Mudhukulathur and Sub Inspector of Police who had registered the FIR. On completion of investigation, he had filed the final report before the Court of the learned Judicial Magistrate, Mudhukulathur.

2.3. The learned Judicial Magistrate had taken cognizance of the final report filed under Section 173 of Cr.P.C., by P.W-10-Deputy Superintendent of Police, had taken the case on file as P.R.C.No.22 of 2014 and issued summons to the accused. On appearance of the accused, the copies were furnished under Section 207 of Cr.P.C., Since offences are triable by the Court of Sessions, the case records in P.R.C.No.22 of 2014 were committed to the Court of learned Principal Sessions Judge, Ramanathapuram and the accused was bound over to the Court of learned Principal Sessions Judge, Ramanathapuram.

2.4. On receipt of the records, the learned Principal Sessions Judge had numbered the case as Spl. S.C.No.102 of 2014 and on appearance of the accused framed charges under Section 506 (i) of IPC r/w. Section 3 (1) (x) of SC/ST (Prevention of Atrocities Act), the first accused-Rathinavel, second accused-Dhanalakshmi and third Accused- Thangapandi denied the charges and claimed to be tried. Therefore, trial was ordered.

2.5. During trial, the prosecution had examined the witnesses P.W-1 to P.W-10 and marked documents under Ex.P-1 to P-10. On completion of prosecution evidence, the incriminating evidence were put to the accused under Section 313 of Cr.P.C., and Accused 1 to 3 had denied the charges. After proceeding under Section 313 of Cr.P.C., the prosecution had argued the case and the defence had replied to the prosecution arguments.

2.6. After hearing the prosecution and the defence and on assessment of evidence, the learned Principal Sessions Judge, Ramanathapuram, in her judgment in Spl.S.C.No.102 of 2014 dated 13.06.2016 had convicted the first accused-Rathinavel and acquitted the second accused-Dhanalakshmi and Third Accused-her husband-Thangapandi. The learned Principal Sessions Judge in her judgment dated 13.06.2016 had convicted the first accused under Section 506 (i) of IPC r/w. Section 3 (1) (x) of SC/ST (Prevention of Atrocities Act) and sentenced him to undergo Rigorous Imprisonment of One year



Imprisonment of three months for the offence under Section 3 (1) (x) of SC/ST (Prevention of Atrocities Act) and had convicted for the offence under Section 506 (i) of IPC and sentenced him to undergo Imprisonment of One year and to pay a fine of Rs.500/- in default to undergo Simple Imprisonment of one month.

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3. Aggrieved by the judgment of conviction and sentence of imprisonment imposed against the accused, the sole accused-Rathinavel had preferred this appeal before this Court.

4. It is the contention of the learned counsel for the appellant/Accused that the learned Principal Sessions Judge failed to appreciate the evidence on proper perspective. The family of Dhanalakshmi had already obtained the injunction Order against the prosecution witnesses and also during cross examination Community Certificates of P.W-1 to P.W-5 were marked, Community Certificate of P.W-1 was marked as Ex.D-1 wherein it had been stated that the Community Certificate downloaded from website and also the family of Dhanalakshmi had preferred Land Grabbing Complaint against P.W-1 and the same is pending before the Court concerned. While so, this case had been wrongly foisted against the accused with an ulterior motive. In the cross examination of P.W-1 to P.W-5, the community certificate of P.W-1-Nallal was put to the witness, they had indirectly admitted that they do not use Bindhi on the forehead and Ex.D-1 clearly stated that P.W-1-Nallal is a Christian. When that being the case, the learned Sessions Judge ignoring those facts and convicting the accused is found perverse.

5. The learned counsel for the appellant/accused had invited the attention of this Court to the contents of Ex.P.1. She claims that she does not know who typed Ex.P-1 and she does not know to read and write in Tamil and she does not know the Patta Number and Survey Number that is alleged to have been in enjoyment of the family. Further, She does not know the contents of Ex.D-1. When she was confronted with Ex.D-1, she admitted that O.S.No.68 of 2015 is pending before the Court of learned District Munsif cum Judicial Magistrate, Mudhukulathur and interim injunction was ordered in I.A.No.462 of 2015. She admitted that she had appeared before the Anti Land Grabbing Police. She had also admitted that there are houses on the street where the residence of the accused is situated. While so, the Investigation Officer had not examined independent witnesses except interested witnesses P.W-1 to P.W-5 who are all related to each other. Therefore, the allegations in the FIR had not been properly proved beyond reasonable doubt before the Court of the learned Principal Sessions Judge, Ramanathapuram. Therefore, convicting the accused under Section 3 (1) (x) of SC/ST (Prevention of Atrocities Act) and sentencing him to undergo One year Rigorous Imprisonment is perverse.

6. In support of the contention of the learned counsel for the appellant/Accused, he had relied on the following rulings:

<https://hccases.judts.tn/jn/cases>



- (1) ***Kishan Singh (D) through L. Rs. -Vs- Gurpal Singh & Ors.*** reported in ***AIR 2010 SCC 3624.***
- (2) ***Dilawar Singh Vs. State of Delhi*** reported in ***AIR 2007 SCC 3234.***
- (3) ***Marudanal Augusti Vs. State of Kerala*** reported in ***1980 (4) SCC 425.***
- (4) ***Thulia Kali Vs. The State of Tamil Nadu*** reported in ***AIR 1973 SC 501.***
- (5) ***P.Meganathan Vs. State of Tamil Nadu*** reported in ***2010 (1) MWN (Cr.) 454 : 2010 (3) MLJ (Cr1.) 182.***
- (6) ***R.Venkatraj Vs. State Rep. by Inspector of Police, Virudhunagar*** reported in ***2012 (1) MWN (Cr.) 448.***
- (7) ***Ganesh Bhavan Patel and another Vs. State of Maharashtra*** reported in ***(1978) 4 SCC 371.***
- (8) ***Hitesh Verma Vs. State of Uttarakhand and another*** reported in ***(2020) 10 SCC 710.***
- (9) ***V.Ponnusamy Vs. State Rep. by D.S.P.Palladam*** reported in ***2016 SCC Online Mad 3048.***
- (10) ***Kalaivani Vs. State*** reported in ***2016 SCC Online Mad 7599.***
- (11) ***Crl.A.No.390 of 2016 dated 18.11.2019 (C.Selvaraj and 2 Others Vs. The Deputy Superintendent of Police, Tindivanam)***
- (12) ***Crl.A.(MD).No.275 of 2014 dated 19.12.2019 (Selvam @ Kalaiselvam Vs. The State Rep. by Deputy Superintendent of Police)***

7. Further the learned counsel for the appellant/accused submitted that the FIR had been lodged with an ulterior motive as the P.W-1 could not get favourable Order from the Civil Court or from the Anti Land Grabbing Cell. Therefore, with an ulterior motive and with an intention to cause harassment to the family of Dhanalakshmi, who are rightful claimants of the property, a false case has been foisted on 28.12.2013. As per the complaint dated 16.12.2013. P.W-1 was unable to state clearly in the cross examination who had typed the complaint and Patta Number and Survey Number or the extent of the property under their cultivation. As per the family of the accused, they are enjoying the property with due records. While so, family of P.W-1 do not have case to succeed in the Civil Court.

8. The learned Government Advocate (Crl. Side) had vehemently opposed the arguments of the learned counsel for the appellant stating that the learned Principal Sessions Judge had properly assessed the evidence and on the basis of the Community Certificate furnished by the Tahsildar, Kadaladi and Tahsildar, Mudhukulathur and the evidence of P.W-7-Mohan, Tahsildar, Kadaladi and P.W-8-Ravi Raj, Tahsildar, Mudhukalathur, the learned Sessions Judge had arrived at a conclusion that the alleged occurrence had taken place.



Therefore, the appeal lacks merits and it has to be dismissed.

9. Point for Consideration:

Whether the judgment of conviction recorded by the learned Principal Sessions Judge, Ramanathapuram in Special Sessions Case No.102 of 2014 is perverse warranting interference by this Court as Appellate Court?

10. On a perusal of the entire materials available before the learned Sessions Judge and on consideration of the entire evidence available, it is seen that as per the cross examination of P.W-1 to P.W-5, P.W-8 had issued Community Certificate to the accused as they belonged to Maravar Community and P.W-7 had issued Community Certificate to P.W-1 that she belonged to Palla Community. P.W-7 in his cross examination had admitted that the Community Certificate has been downloaded from the website of Revenue Department. He had admitted that Ex.D-1 is the community Certificate belonging to P.W-1. He had issued Ex.P-4 to the Deputy Superintendent of Police-Investigation Officer in this case and he had stated that P.W-10 had insisted for the community certificate in the name of P.W-1 that she belonged to Pallar Community. Therefore, he had issued community certificate based on the report of the Village Administrative Officer and Revenue Inspector concerned. P.W-7-Tahsildar, Mudhukulathur had not disputed and admitted Ex.D-1 belongs to P.W-1 and it is clearly stated that she belongs to Christian Community and she converted from Pallar Community to Christian Community. When that be the case, the Provision of SC/ST (Prevention of Atrocities Act) cannot be enforced. Suppressing the same, she had claimed Caste name and the same had been used against the accused. Therefore, the judgment of the learned Principal Sessions Judge is found to be perverse. In the cross examination of P.W-1 to P.W-5 they had stated that they do not use Bindhi on the fore head and they offered a different explanation that as her daughter objected to the same, they are not using bindhi in the forehead. Based on the above evidence, this Court had arrived at a conclusion that learned Principal Sessions Judge had erred in appreciating the evidence. Instead of appreciating the materials before her, she had mis-directed herself and convicted the accused.

11. The evidence of P.W.-1 to P.W-5 in cross examination and the evidence of P.W-1 particularly in the light of Ex.D-1 and the cross examination of P.W-7 admitting Ex.D-1, P.W-1 cannot be considered as a Scheduled Caste, she belongs to Christian Community. Under those circumstances, the conviction of the appellant by the learned Principal Sessions Judge, Ramanathapuram is found perverse and the same is set aside. The accused is acquitted from all the charges and the fine already imposed on the accused is directed to be refunded to him.

12. The point for consideration is answered in favour of the ~~appellant~~ and against the prosecution/respondent. The



judgment of conviction recorded by the learned Principal Sessions Judge, Ramanathapuram in Special Sessions Case No.102 of 2014 is perverse.

In the result, this Criminal Appeal is allowed.

The finding of guilt recorded by the learned Principal Sessions Judge, Ramanathapuram in Spl.S.C.No.102 of 2014 and the conviction and sentence imposed under Section 506 (i) of IPC and Section 3 (1) (x) of SC/ST (Prevention of Atrocities Act) are set aside. The bail bond executed by the appellant, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Judge,
Ramanathapuram.
- 2.The Judicial Magistrate, Mudukulathur.
3. The Inspector of Police,
Kadaladi Police Station,
Ramanathapuram District.
- 4.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.
- 5.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-33399[F] dated 01/11/2021)

Crl.A.(MD) No.249 of 2016
29.10.2021

RD(7.01.2022) 7P 8C