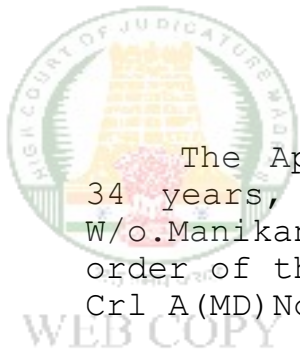




BAIL SLIP

The Appellant/Accused 1 and 2 namely 1)Manikandan, Male, aged 34 years, S/o.Veeranathevar, 2)Maheswari, Female, aged 30 years, W/o.Manikandan, were directed to be released on bail as per the order of the Court dated 22/02/2016 in Crl MP(MD) 1612 of 2016 in Crl A(MD)No.57 of 2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.03.2021

Pronounced on : 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.A(MD).No. 57 of 2016

1. Manikandan
2. Maheswari : Appellants / A1 and A2

Vs.

State rep. by the
The Deputy Superintendent of Police,
Usilampatti Taluk Police Station,
Madurai District.
(Crime No. 73 of 2014)

: Respondent / complainant

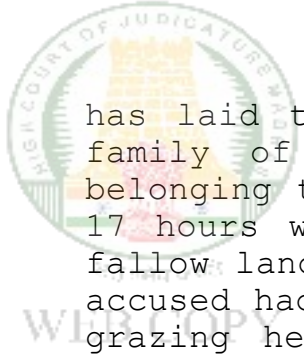
PRAYER:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the Judgment and Conviction and Sentence dated 08.02.2016 imposed by the learned III Additional District and Sessions Judge (PCR Court), Madurai in Spl.S.C.No.53 of 2014 and quash the same.

For Appellants : Mr.P. Paul Sukumar
For respondent : Mr. V. Neela Kandan
Additional Public Prosecutor

JUDGMENT

The Criminal Appeal is directed against the Judgment of conviction passed in Spl.Sessions Case.No.53 of 2014, dated 08.02.2016 on the file of III Additional District and Sessions Court (PCR), Madurai.

2. The appellants are the accused Nos. 1 and 2 in S.C.No. 53 of 2014 on the file of the III Additional District and Sessions Court, Madurai. The Deputy Superintendent of Police, Usilampatti



has laid the charge sheet against the accused alleging that the family of the defacto complainant Eswari and the accused are belonging to the Kuppanampatti Village, that on 13.10.2014 at about 17 hours when the defacto complainant was grazing her cow in the fallow lands owned by one Manikandan, S/o. Erulandi @ Mokkai, the accused had abused the complainant and questioned as to how she was grazing her cow in the lands of their relative, that the first accused had abused her in filthy language using Caste name and slapped her with chappel, that the second accused had also abused her using caste name and beaten on her back with the hands and caused injuries and that thereby, the accused had committed the offences under Sections 294(b), 323 IPC r/w. 3(1) (x) and 3(1) (xi) of SC/ST (POA) Act.

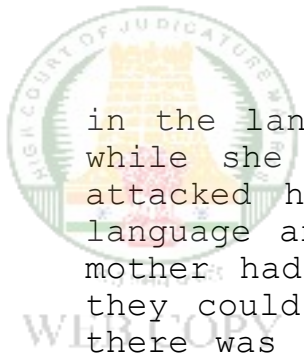
3. The learned Judicial Magistrate, Usilampatti had taken the case on file in PRC.No. 14 of 2014 and furnished the copies of records under Section 207 Cr.P.C., on free of costs. The learned Judicial Magistrate finding that the offences under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 are exclusively triable by the Special Court under the said the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 / Court of Sessions, after compliance under Sections 208 and 209 Cr.P.C., had committed the case to the file of Special Court and the same was taken on file in Spl.S.C.No. 53 of 2014, on the file of III Additional District and Sessions Court (PCR), Madurai. After appearance of the accused, the learned Sessions Judge, on hearing both the sides and on perusal of records, being satisfied that there existed a prima facie case against the accused, framed charges under Sections 294(b), 355, 323 r/w. 34 and Section 3(1)(r) of SC / ST (POA) Act as against the first accused and under Sections 323, 355 r/w. 34 IPC and under 3(1)(r) of SC / ST (POA) Act as against the second accused and the same were read over and explained to the accused and on being questioned, they denied the charges and pleaded not guilty.

4. During trial, the prosecution, in order to prove its case, has examined 9 witnesses as PW.1 to PW.9 and exhibited 9 documents as Ex.P1 to Ex.P9.

5. The case of the prosecution emerging from the evidence adduced by the prosecution in brief is as follows:

(i) PW.1 - Eswari, the defacto complainant is the daughter of PW.4 - Pandiyammal and PW.2 Pandi Meena is her sister. PW.1 to PW.5 are residing at Kuppanampatti. PW.1, PW.2 and PW.4 are belonging to Arunthathiyar community and the accused are belonging to Kallar Community.

(ii) On 13.03.2014, PW.1 had tied her cow in the dry lands of one Manikandan. The second accused Maheswari at about 5.00 p.m., had questioned and abused her as to how she had tied her cow



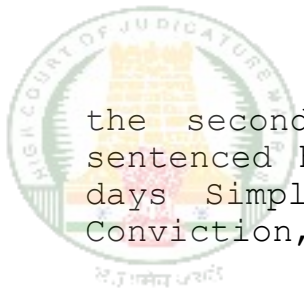
in the land of their relative. PW.1 had then untied her cow and while she was returning, the second accused came behind her and attacked her back. The first accused had abused her in filthy language and slapped her with chappel. PW.2 - sister and PW.4 mother had intervened and separated. Since it was informed that they could talk in the village, she had remained silent. Since there was no such talk and no one has turned up, she had visited the Usilampatti Police Station on the next day and gave the complaint under Ex.P1. PW.8 - Sub Inspector of Police, while he was on duty at about 10.00 a.m., on 14.03.2014, received the complaint and registered a case in Crime No. 73 of 2014 for the offence under Sections 294(b), 323 IPC r/w. 3(1)(x) SC/ST (POA) Act and prepared the First Information Report under Ex.P4. He sent P.W.1 - Eswari to hospital for treatment by issuing a Medical Memo.

(iii) P.W.7 - Medical Officer while he was on duty on 14.03.2014, PW.1 came to the hospital for treatment by alleging that two known persons attacked her with hands and chappel on that day at about 5.00 p.m., He noticed three finger nail scratches on her cheek and one finger nail scratch on left shoulder and treated her as out patient. Thereafter, he has given his opinion that the injury suffered by PW.1 are simple in nature and issued the wound certificate under Ex.P6.

(iv) PW.9 - Deputy Superintendent of Police, after receiving the First Information Report had taken up the investigation and visited the occurrence place at 11.30 a.m., on 14.03.2014 and inspected the place in the presence of PW.3 - Ammavasi, PW.5 - Selvam and prepared the Observation Mahazar under Ex.P8 and drew a Rough Sketch under Ex.P9. Thereafter, he examined the witnesses and recorded their statements. Then, he applied to the Thasildar, Usilampatti and obtained the community certificates of the complainant and the accused and examined the Thasildar and recorded his statement. PW.9 has received the Medical Certificate and recorded the statement of Medical Officer. With the examination of PW.9, the prosecution has closed their side evidence.

6. When the accused were examined under Section 313 (1)(b) Cr.P.C., with regard to the incriminating aspects found available against the accused in the evidence produced by the prosecution, they denied the same as false and stated that a false case was foisted against them. Though the accused have stated that they are having defence evidence, they have not let in any evidence subsequently.

7. The learned Sessions Judge, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the impugned Judgment on 08.02.2016, convicting the first accused for the offence under Section 355 IPC and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment and convicted



the second accused for the offence under Section 323 IPC and sentenced her to pay a fine of Rs.500/- in default to undergo 15 days Simple Imprisonment. Aggrieved by the said Judgment of Conviction, the accused have come forward with the present appeal.

8. Whether the impugned Judgment of conviction and sentence imposed in Spl.S.C.No.53 of 2014, dated 08.02.2016 on the file of the III Additional District and Sessions (PCR) Court, Madurai is liable to be set aside? is the point for consideration.

9. I have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent.

10. The relationship that PW.1 is the daughter of PW.4 Pandiyammal and PW.2 Pandi Meena is her sister and that the second accused is the wife of the first accused are not in dispute. The case of the prosecution is that on 13.03.2014 at about 5.00 p.m., when PW.1 was grazing the cow in the land owned by Manikandan, the accused had abused and questioned her as to how she was grazing her cow in the lands owned by their relative, that the first accused had abused her in filthy language using Caste name and slapped her with chappel and that the second accused had also beaten her behind the back with hands and caused injuries.

11. The prosecution has examined PW.1, 2 and 4 as the occurrence witnesses. As rightly contended by the defence, PW.1, 2 and 4, are closely related to each other, as PW.1 and PW.2 are the own daughters of PW.4. Moreover, as rightly pointed out by the defence, PW.1 in her evidence before the trial Court would say that there were many houses in the occurrence place, that ten persons had witnessed the occurrence, who are the close relatives of the accused and that all the persons who were present at that time had witnessed the incident. She would further admit that she has not named the persons who were present in the place of occurrence in the complaint. It is not the case of the prosecution that PW.8 - Investigating Officer had examined those 10 persons who allegedly witnessed the occurrence, but refused to stand as witnesses. As rightly contended by the defence, except the examination of PW.1, PW.2 and PW.4, the prosecution has not chosen to examine any other person who had allegedly witnessed the occurrence.

12. Regarding the incident, PW.1 would say that on 13.03.2014 at about 5.00 p.m., the second accused had questioned her as to how she had tied her cow in the land of their relative, that she had abused PW.1 using Caste name, that PW.1 had untied her cow and while she was returning, the second accused came behind her and attacked on her back, that thereafter, the first accused had abused PW.1 in filthy language using Caste name and slapped on her face with chappel and that her mother and sister had intervened and separated them. PW.2 would say that the second accused had abused



PW.1 using Caste name and that while the second accused was quarrelling with PW.1, the first accused had slapped PW.1 with chappel. PW.4 in her evidence would say that at the time of incident, the second accused had abused PW.1 in filthy language using Caste name and attacked her with hands and sickle and that while she was moving with the cow, the first accused had abused in filthy language using Caste name and also threatened to kill her and that he had slapped PW.1 with chappel. As rightly contended by the defence, neither the prosecution nor PW.1 would say that the second accused had abused PW.1 in filthy language using Caste name. Moreover, PW.1 has not stated anywhere that the second accused had attacked her with sickle or that she was holding sickle (பண்ணருவாள்) at the time of incident. It is also not the case of the prosecution or PW.1 that PW.4 had untied the cow and she had taken their cow back. As rightly contended by the defence, the chappel alleged to have been used for slapping PW.1 was not at all recovered and the prosecution has not offered any explanation for non-recovering of the same.

13. It is the specific case of the prosecution that PW.1 had visited the Usilampatti Taluk Police Station at about 10.00 a.m., on 14.03.2014 and gave the complaint and that PW.8 - Sub Inspector of Police, who was on duty, received the same and on that basis, First Information Report came to be registered. PW.8 in his evidence would say that PW.1 came to the police station at about 10.00 a.m., on 14.03.2014 and after receiving the complaint he registered a case and prepared the First Information Report - Ex.P7. He would further say that after receiving the complaint, he had sent PW.1 to the hospital for the treatment by issuing a Medical Memo. In Ex.P1 complaint, PW.8 has made an endorsement about the registration of complaint and issuance of Medical Memo in 18/ML/G3PS/14 directing PW.1 to go to Usilampatti Government hospital for taking treatment. It is evident from Ex.P7 First Information Report that in Column 3(b) information about the occurrence was shown to have received by the police station on 14.03.2014 at 10.00 a.m., and in the First Information Report also, particulars of the Medical Memo issued were noted. But it is pertinent to mention that PW.7 - Medical Officer, in Ex.P6 Accident Register has noted that PW.1 came to the hospital for treatment at 6.00 a.m., on 14.03.2014. PW.8, at the beginning of the cross examination would say that only after preparing the First Information Report, the Medical Memo has been issued, but, subsequently, he would say that after sending PW.1 to the hospital for treatment, he had prepared the First Information Report. PW.9 - Investigating Officer would admit that PW.7 had recorded the Accident Register as if PW.1 had visited the hospital at 6.00 a.m., and that the First Information Report came to be registered at 10.00 a.m., on 14.03.2014.

14. The main contention of the defence is that the complaint preferred by PW.1 before the Police prior to 10.00 a.m.,



was suppressed by the prosecution. Admittedly, PW.8 had received the complaint from PW.1 and directed her to go to Usilampatti Government Hospital for taking treatment by issuing a Medical Memo and that he registered the case and prepared the First Information Report incorporating the Medical Memo particulars. If that be so, the prosecution has not given any reason or explanation as to how PW.1 had visited the hospital with Medical Memo at about 6.00 a.m., itself. As rightly contended by the defence, it can easily be inferred that PW.1 had lodged another complaint prior to Ex.P1 and another only on that basis, she was forwarded to the hospital after issuing the Medical Memo. At this juncture, it is necessary to refer the decision of this Court reported in **(2016) 2 MLJ (Cr1) 134 (Karuppaiah Vs. State represented by the Inspector of Police, J-3 Guindy Police Station, Law and Order, Chennai- 600 032):**

" 14.It is an admitted fact that the occurrence has taken place on 20.05.2013, at about 4.00 p.m. It is equally an admitted fact that Ex.P.1 has come into existence on 21.05.2013, wherein P.W.2 has put his signature as a witness. Since P.W.1 has given clear evidence even during the course of cross-examination to the effect that on the date of occurrence itself he has given an oral complaint and the same has been reduced in writing by a constable, wherein, he put his thumb impression and the same has not been marked on the side of the prosecution, therefore, it is needless to say that the genesis of the case of the prosecution has been purposely suppressed. Further, it is not the evidence of P.W.1 that after occurrence, only on 21.05.2013, he has given a complaint with regard to occurrence. Therefore, the complaint alleged to have been given by P.W.1 on the date of occurrence at about 5.00 p.m, in the police station has been suppressed and since the same has been suppressed, the Court cannot give much utterance either to Ex.P.1 or the evidence given by P.Ws 1 to 5.

15.The trial Court, without considering the vital contradictions found in the case of the prosecution and also without considering that the earlier complaint has been suppressed on the side of the prosecution, erroneously invited convictions and sentences against the appellant/accused. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether the present criminal appeal is liable to be allowed."

15. In the above decision, the witnesses therein had admitted that they had given a oral complaint on the occurrence day and the same was reduced to writing, but the same was not produced



by the prosecution and hence, this Court observed that the genuineness of the case of the prosecution was purposely suppressed. In the present case, as already pointed out, admittedly, PW.1 had visited the Government Hospital at 6.00 a.m., on 14.03.2014 with the Medical Memo and the complaint alleged to have been given prior to 6.00 a.m., was not at all produced. As rightly contended by the defence, in the case on hand also, the prosecution has suppressed the first complaint. PW.1 in her complaint as well in her evidence had stated that since the elders of the locality had informed that they could talk in village, she had not lodged the complaint immediately and that since no one has turned up for talking, she was forced to give a complaint on the next day.

16. As rightly pointed out by the defence, PW.1 has not mentioned the particulars of the elders, who had informed her that they could talk in the village, in the complaint. PW.9 would admit that he had not examined those elders. PW.1, before the trial Court has not named the elders. Except the above said reason, PW.1 has not offered any acceptable reason or explanation for not lodging the complaint on the occurrence day. As rightly contended by the defence, the evidence of PW.1, PW.2 and PW.4 with respect to the injuries allegedly sustained by PW.1 were not tallied with the medical evidence. As already pointed out, according to the prosecution, the first accused had slapped PW.1 with the chappel and the second accused had beaten PW.1 on her back with hands. But, according to the PW.7 - Medical Officer, he had noticed three finger nail scratches on her left cheek and one finger nail scratch in the left shoulder. PW.7 would say in his evidence that except the above finger nail scratches, PW.1 had no other injuries and hence, she was treated as out-patient. As rightly contended by the defence, PW.1 has not suffered any contusion type of injury on her cheek or back. The prosecution has not offered any other reason or explanation with respect to the finger nail scratches noticed by the Medical Officer.

17. It is the specific case of the prosecution that PW.9 after taking up the investigation had visited the occurrence place at about 11.30 a.m., and inspected the place of occurrence in the presence of PW.3 and PW.5 and prepared Ex.P8 observation Mahazar and Ex.P9 - Rough Sketch. PW.3 in his evidence before the trial Court would only admit his signature found in the observation Mahazar and as such the signature found in the observation Mahazar alone was marked as Ex.P2. PW.5 in his evidence would deny the signature found in the observation Mahazar and since both PW.3 and PW.5 have not supported the case of the prosecution, by treating them as hostile, were subjected to cross examination, but nothing was elicited by the prosecution in their favour. Considering the evidence of PW.3 and PW.5 it is highly doubtful as to whether PW.9 had really visited the occurrence place and prepared observation Mahazar and Rough Sketch.



18. Considering the above, this Court has no hesitation to hold that the prosecution has miserably failed to prove the charges levelled against the accused beyond reasonable doubt. But, the trial Court has not appreciated the evidence adduced in proper legal perspective and also failed to consider that the earlier complaint was suppressed. Hence, this Court concludes that the Judgment of conviction and sentence imposed by the III Additional District and Sessions Judge (PCR Court), Madurai in Spl.S.C.No.53 of 2014 is liable to be set aside and is set aside.

19. In the result, the Criminal Appeal is allowed and the Judgment of conviction imposed against the accused in Spl.S.C.No.53 of 2014 on the file of III Additional District and Sessions Judge (PCR Court), Madurai, dated 08.12.2016 is set aside and the accused are acquitted of all the charges and the fine amount, if any, paid is ordered to be refunded. Bail bond, if any shall stand cancelled.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

- 1.The District Munsif cum Judicial Magistrate, Usilampatti.
- 2.-do-Thro The Chief Judicial Magistrate, Madurai.
- 3.The III Additional District and Sessions Judge (PCR Court), Madurai
- 4.The Deputy Superintendent of Police, Usilampatti Taluk Police Station, Madurai District.
- 5.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

CRL.A(MD) .No. 57 of 2016
29.04.2021

KK(21.06.2021) 8P 6C

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