



Bail Slip

The Appellant/Sole Accused Kumaravel S/o Jayaraj was directed to be released on bail vide order of this court dated 10.03.2017 and made in CrI.MP(MD).1254 of 2017 in CRL.A.(MD)No.43 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.07.2021
DELIVERED ON : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.43 of 2017

Kumaravel
S/o. Jayaraj : Appellant/ Accused(single)

Vs.

State Represented by
Deputy Superintendent of Police,
Samayanallur (Sub Division),
Madurai District
in Crime No.71 of 2014
On the file of the Inspector of Police,
Solavandan Police Station,
Madurai District. : Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to call for the records pertaining to the judgment rendered by the III Additional District and Sessions Judge, (PCR), Madurai in Special S.C.No.49 of 2015 dated 09.01.2017 and set aside the same.

For Appellant : Mr.M.Pitchaimuthu
For Respondent : Mr.K.Sanjay Gandhi
Government Advocate (CrI.side)

JUDGMENT

This Criminal Appeal has been filed against the judgment of conviction recorded by the learned III Additional District and Sessions Judge, (PCR), Madurai in Special S.C.No.49 of 2015, dated 09.01.2017.

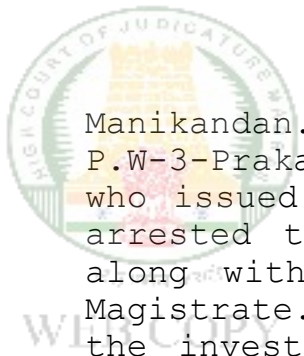
2. The brief facts, which are relevant for consideration in
<https://hcservices.ecourts.gov.in/hcservices/>



this appeal, are as follows:

2.1. P.W-1-Murugan is a resident of Karattupatti, Vadipatti Taluk, Madurai District. On 01.03.2014 by around 18.30 hours, P.W-1 was having tea in the tea shop of P.W-2-Selvam. At that time, Accused in this case had picked up a quarrel with another person and in the course of a wordy quarrel, they entered into a scuffle, whereby on the attack of the other person by the accused, the other person fell on P.W-1 while he was drinking tea. Therefore, P.W-1 had objected to the conduct of both persons who had involved in the scuffle. Enraged by the objection of P.W-1, the accused slapped P.W-1 on his face and abused him in filthy language, calling him that " You, Palla fellow how dare you object my conduct" . He pushed P.W-1 on the floor and kicked him on his chest. By the sudden occurrence, P.W-1 cried for help and the relative of the accused by name Navamani picked up a wooden log and hit P.W-1. The accused picked up a bottle from the tea shop and attacked P.W-1 with bottle. Though P.W-1 thwarted the same, he suffered bleeding injury on his forehead above the eyebrow. The people who were nearby intervened and separated the accused from attacking P.W-1. P.W-2-Tea shop owner and nearby shop owner P.W-4-Kannan had intervened and separated them. The accused abused P.W-1 saying that " You Bastard, how dare you object my action. I will finish you" and attacked P.W-1 with the sharpened broken bottle piece. Therefore, P.W-1 went to Sholavanthan Police Station and gave a complaint under Ex.P-1. Based on the complaint under Ex.P-1 of P.W-1, P.W-9-Annadurai-Head Constable of Sholavanthan Police Station registered a case in Cr.No.71 of 2014 dated 02.03.2014 under Sections 294 (b), 323, 324 and 506 (ii) of IPC and Section 3(i)(x) of SC/ST (Prevention of Atrocities) Act. He had sent the original complaint under Ex.P-1 and original FIR under Ex.P-4 to the Court of the learned Judicial Magistrate, Usilampatti and to the higher officials of the Police Department including the Superintendent of Police and Deputy Superintendent of Police.

2.2. On receipt of the FIR, the Superintendent of Police, Madurai (Rural) had by his proceedings under Ex.P-7 appointed P.W-10-Santhasoruban-Deputy Superintendent of Police, Samayanallur, Madurai as Investigation Officer to investigate the case under SC/ST Act and accordingly P.W-10 had taken up the investigation and visited the scene of occurrence at Selvam Tea Shop in the presence of witnesses P.W-5 and Manikandan and prepared Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-8. He had also sent requisition letters to the Tahsildars seeking community certificates of the accused and P.W-1. Tahsildars had issued community certificates for the accused under Ex.P-5 to the P.W-10-Deputy Superintendent of Police-Investigation Officer that he belongs to Konar community and P.W-1's community certificate under Ex.P-6 that he belongs to Pallar (SC) community. He had also seized the broken bottle under M.O-1 and wooden log under M.O-2 under the seizure Mahazar under Ex.P-3 in the presence of witnesses P.W-5 and



Manikandan. He had also examined P.W-2-Selvam-Tea Shop owner and P.W-3-Prakash who is the son of P.W-2. He had examined Tahsildars who issued community certificates under Ex.P-5 and Ex.P-6. He had arrested the accused and sent him to remand with remand request along with Police Escorts to the Court of the learned Judicial Magistrate. He had examined P.W-1-complainant and on completion of the investigation, laid final report before the Court of learned Judicial Magistrate, Usilampatti.

2.3. The learned Judicial Magistrate, Usilampatti had taken cognizance of the final report under Section 173 of Cr.P.C., filed by P.W-10-Deputy Superintendent of Police, Samayanallur and taken cognizance of the offences under Sections 294 (b), 323, 324 and 506 (ii) of IPC and Section 3 (i) (x) of SC/ST (Prevention of Atrocities) Act and summons were issued to the accused.

2.4. On appearance of the accused, the learned Judicial Magistrate had furnished copies of the final report filed by P.W-10 to the accused under Section 207 of Cr.P.C and questioned the accused whether he has financial resources to engage a counsel to defend him in a trial. The accused stated that he has resources to engage a counsel to defend himself.

2.5. Since the offences are triable by the Court of Sessions, the learned Judicial Magistrate committed the case in P.R.C.No. 5 of 2015 to the Court of learned Principal Sessions Judge, Madurai and bound over the case to the learned Principal Sessions Judge, Madurai.

2.6. On receipt of records in P.R.C.No.5 of 2015 from the Court of learned Judicial Magistrate, the learned Principal Sessions Judge, Madurai had taken cognizance of the offence under Sections 294 (b), 323, 324 and 506 (ii) of IPC and Section 3 (i) (x) of SC/ST (Prevention of Atrocities) Act. On appearance of the accused, the learned Sessions Judge had made over the case to the Court of learned Additional Sessions Judge-III, Madurai and bound over the case to the Court of learned Additional Sessions Judge-III, Madurai.

2.7. On appearance of the accused, the learned Additional Sessions Judge-III, Madurai, after hearing the arguments of the prosecution and the defence, had framed charges under Sections 294 (b), 323, 324 and 506 (ii) of IPC and Section 3 (i) (x) of SC/ST (Prevention of Atrocities) Act.

2.8. The accused denied the charges and claimed to be tried. Therefore, learned Additional Sessions Judge-III, Madurai had ordered trial.

2.9. During trial, the prosecution had examined P.W-1 to P.W-10 and marked documents under Ex-P-1 to Ex.P-10 and M.O-1 and M.O-2.



2.10. After prosecution evidence was closed, the accused was examined under Section 313 of Cr.P.C regarding the incriminating evidence available against him, the accused denied the same.

2.11. After examination of the accused under Section 313 of Cr.P.C., the prosecution and defence had advanced their arguments and on appreciation of evidence available through witnesses P.W-1 to P.W-10 and on assessment of Ex.P-1 to Ex.P-10 and M.O.-1 and M.O-2, the learned Additional Sessions Judge - III, Madurai, had arrived at a conclusion that the prosecution had proved the charges under Sections 294 (b), 324 of IPC and Section 3 (i) (x) of SC/ST (Prevention of Atrocities Act) against the accused. The learned Additional Sessions Judge - III, Madurai had acquitted the accused in respect of the charges under Sections 323 and 506 (ii) of IPC and convicted under Sections 294 (b) and 324 of IPC and Section 3 (i) (x) of SC/ST (Prevention of Atrocities) Act and convicted the accused under Section 294 (b) of IPC sentenced him to undergo One month Rigorous Imprisonment and to pay a fine of Rs.250/-, in default, to undergo One week Simple Imprisonment and under Section 324 of IPC sentenced him to undergo One year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo One month Simple Imprisonment and under Section 3(i) (x) of SC/ST (Prevention of Atrocities) Act sentenced him to undergo One year Rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo One month Simple Imprisonment.

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

4. Mr.M.Pitchaimuthu, learned counsel for the appellant submitted his arguments. As per his submissions, the Investigation Officer had not conducted proper investigation. The case was registered as an after thought to wreck vengeance on the accused with the help of P.W-1 and the tea shop owner who was examined as P.W-2. P.W-2 and the accused belong to the same community but there was enmity between them. This case had been foisted with the help of the P.W-1. The FIR under Ex.P-4 clearly states the date of occurrence as 01.03.2014 whereas the FIR was registered only on 02.03.2014. P.W-1 had approached the Police Station with the influence of his caste, long after the alleged date of occurrence. It is only to wreck vengeance on the accused. The accused and P.W-1 to P.W-3 belong to same village. There was previous enmity among them, which had been used as a weapon to imprison the accused on a false case which had been foisted. The delay had not been properly explained by the prosecution. Therefore, the conviction of the accused by the learned trial Judge is vitiated and perverse. Therefore, the same is to be set aside.



5. The learned Government Advocate (Crl. Side) submitted his written arguments. As per his submission, the learned Sessions Judge discussed the entire materials available before him and arrived at a just conclusion that the charges framed against the accused had been proved beyond reasonable doubt and had convicted the accused. The learned Sessions Judge had on proper appreciation of evidence found that the charges against the accused under Section 323 of IPC had not been proved and as also Section 506 (ii) of IPC. Therefore, the contention of the learned counsel for the appellant that the learned Sessions Judge had not considered the material available before him as per the Provision of Indian Evidence Act, does not have any merit and is to be rejected.

6. As per the submission of the learned Government Advocate (Crl. Side), P.W-1 is the injured victim, P.W-2 is the owner of the tea shop, P.W-3 is also an eye witness, who is the son of tea shop owner viz., P.W-2, P.W-4 is also eye witness who was an adjacent tea shop owner. P.W-5 who is a witness to the Observation Mahazar and Rough Sketch prepared by the Investigation Officer. P.W-6-Sub Inspector of Police who had registered the FIR and P.W-7-Tahsildar who had issued community certificate for the accused belongs to Yadava Community under Ex.P-5 and P.W-8-Tahsildar who had issued community certificate for P.W-1 belongs to Pallar (SC) Community under Ex.P-6. P.W-9 had on receipt of the complaint under Ex.P-1 from P.W-1, issued memo from the Police Station to the Government Hospital to treat the injured and placed the complaint before the Sub Inspector of Police for registration of FIR. P.W-6-Sub Inspector of Police had on receipt of the complaint under Ex.P-1 registered the FIR under Ex.P-4, he had forwarded the original complaint and the FIR to the learned Judicial Magistrate, Usilampatti and copies to the higher officials including Superintendent of Police, Madurai (Rural). Based on which, Superintendent of Police had by his proceeding under Ex.P-7 appointed P.W-10-Deputy Superintendent of Police as Investigation Officer.

7. The learned Sessions Judge had discussed the evidence elaborately and relied on the rulings of the Hon'ble Supreme Court regarding shoddy investigation, which cannot be considered as advantage to the accused, and arrived at a logical conclusion that the prosecution had proved the charges framed against the accused under Sections 294 (b), 324 and Section 3 (i) (x) of SC/ST (Prevention of Atrocities) Act. He had acquitted the accused for the offence under Section 323 and 506 (ii) of IPC. The learned Sessions Judge had elaborately discussed the evidence from the paragraph Nos.16 to 35. Therefore, nothing is found perverse from the judgment of the learned Sessions Judge and this appeal lacks merit and is to be dismissed.

8. Point for Consideration:

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Whether the judgement of conviction recorded by the learned III Additional District and Sessions Judge, (PCR), Madurai in Special S.C.No.49 of 2015, dated 09.01.2017 is perverse warranting interference by this Court as Appellate Court?

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9.Perused the evidence available on record and on perusal of the judgment of the learned trial Judge, it is found that the learned trial Judge had appreciated the evidence and assessed the evidence as per the provision of the Indian Evidence Act. On proper appreciation of evidence, charges framed against the accused under Sections 294 (b), 324 of IPC and Section 3 (i) (x) of the SC/ST (Prevention of Atrocities Act). The contention of the learned counsel for the accused that the FIR was registered with a long delay and the delay had not been explained does not warrant interference considering the nature of offence and the Rulings cited in support of the prosecution regarding shoddy investigation. Therefore, P.W-1 belongs to Pallar Community, the accused belongs to Yadhava Community. P.W-2-Tea Shop owner belongs to the same community. He had corroborated the evidence of P.W-1. P.W-3 is the son of P.W-2, he also corroborated the evidence of P.W-1. P.W-2 and P.W-3 also belong to the same community of the accused. P.W-4 is a shop owner of nearby tea shop. He belongs to Kallar (BC) community. He had also corroborated the evidence of P.W-1. P.W-5 is the witness to the seizure of M.O-1 and M.O-2 and Observation Mahazar under Ex.P-2 and Rough Sketch under Ex.P-8 by the Investigation Officer. P.W-6-Sub Inspector of Police had registered the FIR. P.W-7 and P.W-8 Tahsildars who had issued community certificate. They had cogently spoken about the role. P.W-6 to P.W-10 are official witnesses. P.W-2 to P.W-4 have corroborated the evidence of P.W-1 and the fact that they do not belong to the community of P.W-1 and have spoken against the Accused cogently proved the charge. Therefore, the evidence let in by the prosecution had been proved.

10.As pointed out by the learned counsel for the appellant/accused, the FIR is registered with delay, the prosecution has not offer any explanation. At the same time, the learned Sessions Judge had relied upon the ruling of the Hon'ble Supreme Court in his Judgment in para No.28 which reads as follows:

- 1.1999 (2) SCC 126 (Paras Yadav Vs. State of Bihar)**
- 2. (2004) 3 SCC 654 (Dhanaj Singh Vs. State of Punjab)**
- 3. (1998) 4 SCC 517 (Ram Bihari Yadav Vs. State of Bihar)**
- 4.213 AIR (SC) 3334 (Mritunjoy Biswas Vs. Pranab @ Kuti Biswas & Another)**

Placing reliance on the same, the learned Sessions Judge had rejected the contention of the learned counsel for the defence regarding the lodging of FIR belatedly after one day of the occurrence. Considering the special nature of the offence the



conduct of the prosecuting agency is condoned. The evidence available before the Court is alone taken into consideration by the learned Sessions Judge, thereby, confirming the offence under Sections 294 (b), 324 of IPC and Section 3 (i) (x) of the SC/ST (Prevention of Atrocities Act). Here, on re-assessment of the same, the appellate Court herein considers Section 294 (b) of IPC does not mention about the Imprisonment, it is either Imprisonment or Fine. Whereas the learned Sessions Judge had imposed one month Imprisonment and fine. Therefore, the fine of Rs.250/- will be sufficient, one month imprisonment is not necessary. The same is modified under Section 294 (b) of IPC.

"Section 294

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.]"

11. Therefore, the words alleged to have been uttered by the accused that was spoken by P.W-1 in his cross-examination and in chief, were not spoken to the above witnesses. Therefore, the ingredients of Section 294 (b) of IPC and the charge under Section 294 (b) of IPC had not been attracted. The conviction under Section 294 (b) of IPC is set aside.

12. The words uttered by the accused, calling P.W-1 by name of his community, is denigrating which is spoken to by P.W-1, and the fact that he was kicked on the chest, when he fell down, the accused pushed him and later used a broken bottle to attack him, when he thwarted P.W-1 suffered injuries on his forehead above the eye-brow that was spoken to by P.W-1 in his cross-examination and in chief. Therefore, Section 324 of IPC alone is attracted.

13. The intimidation uttering words that "I will finish him off" had not been spoken to. Therefore, Section 506 (ii) of IPC had not been proved. The only offence proved from the evidence of P.W-1 is Section 324 of IPC and Section 3 (i) (x) of SC/ST (Prevention of Atrocities Act). The Doctor who had treated the injured-P.W-1 had not been examined. In the absence of Doctor's evidence, there is no corroboration of the offence under Section 324 of IPC whether the injury on the forehead had been caused by the accused with broken bottle.

14. Point for consideration is answered partly in favour of the appellant/accused and against the prosecution/respondent. The judgment of conviction recorded by the learned III Additional District and Sessions Judge, (PCR), Madurai in Special S.C.No.49 of 2015 dated 09.01.2017 is perverse warranting interference of this Court, insofar as the offence under Sections 294 (b) of IPC is concerned.



This Criminal Appeal is partly allowed.

The appellant/accused is acquitted from the charge under Section 294 (b) of IPC. The fine already imposed under Section 294 (b) of IPC is ordered to be refunded to the accused. The conviction recorded by the III Additional District and Sessions Judge, (PCR), Madurai in Special S.C.No.49 of 2015 vide his judgment dated 09.01.2017 for the offence under Section 324 of IPC and Section 3(i) (x) of SC/ST (Prevention of Atrocities Act) alone are confirmed. The learned III Additional District and Sessions Judge, (PCR), Madurai is directed to issue warrant to the accused and to forward him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The III Additional District and Sessions Court,
(PCR), Madurai.
2. -do-Through The Principal sessions Judge,
Madurai District.
- 3.The District Munsif cum Judicial Magistrate,
Vadipatti, Madurai District.
- 4.-do-Through The Chief Judicial Magistrate,
Madurai District.
- 5.The Deputy Superintendent of Police,
Samayanallur Sub Division, Madurai District.
- 6.The Inspector of Police,
Solavandan Police Station, Madurai District.
- 7.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

copy to:

The Section Officer, Criminal Records,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

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29.10.2021

RD(3.01.2022) 8P 10C

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