



Bail Slip

The Appellant, Ganesan, S/o.Sadaiyan, was released on bail vide order of this Court dated 08.03.2017 made in Crl MP(MDNo.1961 of 2017 in Crl A.77/2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2021

DELIVERED ON : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.77 of 2017

Ganesan : Appellant/Sole Accused

Vs.

The Deputy Superintendent of Police,
Usilampatti,
Madurai District.

(Cr.No.52 of 2015)

: Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records in the judgment of the learned III Additional District and Sessions Judge (PCR), Madurai in Special S.C.No.65 of 2015 by judgment, dated 07.02.2017 and to set aside the same.

For Appellant : Mr.S.Ramasamy

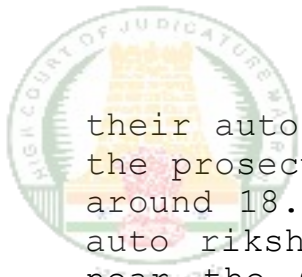
For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

This appeal is filed as against the judgment of conviction and sentence of imprisonment by the learned III Additional District and Sessions Judge (PCR), Madurai, in Special S.C.No.65 of 2015, dated 07.02.2017. The appellant is the sole accused.

2.The brief facts, which are relevant for the appeal, are as follows:

2.1.The accused and P.W-1 herein were auto rikshaw drivers. Both of them belong to neighbouring villages within the local limit of Chekkanurani Police Station. The dispute arose between the accused and the de-facto complainant regarding parking of

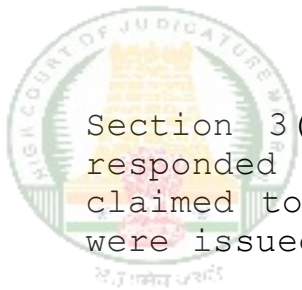


their auto rikshaw in the Chellampatti auto rikshaw stand. As per the prosecution, on the date of occurrence, i.e., on 29.01.2015 at around 18.30 hours, when the de-facto complainant had stopped the auto rikshaw for the passengers to alight from his auto rikshaw near the Chellampatti Auto riskshaw stand, the accused and his relatives belonging to the caste, Piramalai Kallar, had objected to the parking of de-facto complainant's auto rikshaw in the auto rikshaw stand at Chellampatti and had abused the de-facto complainant, verbally in filthy language and assaulted him causing injury on his body, by uttering the words, "how dare you, you bastard, dare enough to give complaint against us". He also threatened him with dire consequences, if the matter is reported to the police. Therefore, the conduct of the accused, as per the prosecution, attracts the provisions of Sections 294(b), 323 and 506(i) IPC r/w Section 3(1)(x) of SC/ST (POA) Act.

2.2.The occurrence had taken place in a public place viz., Chellampatti Auto Rikshaw stand within the local jurisdiction of Chekkanurani Police Station. Therefore, the members of the general public were also examined as witnesses. P.W-6-Special Sub Inspector of Police, Chekkanurani Police Station, had registered the complaint and sent express FIR to the Court of the learned Judicial Magistrate, Usilampatti, and copy of the same was placed before the higher officials.

2.3.Based on the FIR, the Superintendent of Police, Madurai, had appointed P.W-8-Saravana Kumar, Deputy Superintendent of Police, Usilampatti, as Investigation Officer. On receipt of the FIR under Ex.P-6, the Investigation Officer proceeded to the place of occurrence. He had recorded the statements of P.W-1-Ganesan/de-facto complainant, P.W-2- Kamatchi, wife of P.W-1, the members of general public, P.W-7-Muthumari, P.W-3-Ramar and P.W-4-Paulraj. He had also examined P.W-5-Gajendran/ Tahsildar, Usilampatti regarding the caste of the de-facto complainant. He had also examined P.W-6-Krishnan, Special Sub Inspector of Police, who had received the complaint under Ex.P-1 and had registered the FIR under Ex.P-6. The Deputy Superintendent of Police, had laid final report before the Court of the learned Judicial Magistrate, Usilampatti. On summons to the accused, he had appeared before the learned Judicial Magistrate, Usilampatti. The learned Judicial Magistrate had furnished the copies of the charge sheet and committed the case to the Court of the learned Special Judge (PCR cases), Madurai.

2.4.On receipt of the records by the learned Special Judge (PCR cases), Madurai, the learned III Additional District and Sessions Judge, Madurai, had numbered the sessions case as Special S.C.No.65 of 2015 and on appearance of the accused, framed the charges under Sections 294(b), 323 and 506(1) IPC and under



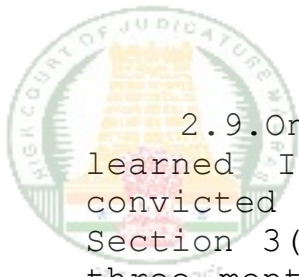
Section 3(1)(x) of SC/ST (POA) Act against the accused and he responded to the charges stating that he is not guilty and he claimed to be tried. Therefore, the trial was fixed and summons were issued to the witnesses.

2.5. The de-facto complainant, Ganesan, examined himself as P.W-1. Kamatchi, the wife of P.W-1, examined as P.W-2. The members of general public-Ramar was examined as P.W-3, Paulraj was examined as P.W-4, Gajendran, Tahsildar, Usilampatti, was examined as P.W-5. Krishnan, Special Sub Inspector of Police, who registered the FIR, was examined as P.W-6, Muthumari, was examined as P.W-7 and Saravana Kumar, Deputy Superintendent of Police, Usilampatti was examined as P.W-8.

2.6. During trial, the complaint given by P.W-1-de-facto complainant, was marked as Ex.P-1. The signature of P.W-3 on Ex.P-3 was marked Ex.P-2. The observation mahazer prepared by P.W-8, Saravana Kumar, was marked as Ex.P-3. The community certificate of P.W-1 was marked as Ex.P-4. The community certificate of the accused was marked as Ex.P-5. The FIR registered by P.W-6 was marked as Ex.P-6. The proceedings of the Superintendent of Police, appointing Saravana Kumar, Deputy Superintendent of Police, Usilampatti, as Investigation Officer, was marked as Ex.P-7. The rough sketch prepared by P.W-8 was marked as Ex.P-8. No witness was examined on the side of the accused.

2.7. P.W-3 and P.W-4 are the so-called independent witnesses. They had remained hostile. P.W-5 is the then Tahsildar of Usilampatti. He had deposed regarding the caste of the accused, as he belongs to Piramalai Kallar and P.W-1 belongs to Pallar community. The community certificate of P.W-1 was marked as Ex.P-4. P.W-6-Krishnan is the then Special Sub Inspector of Police, who had registered the FIR under Ex.P-6. P.W-7 is an independent witness and deposed that she was in the auto rikshaw of P.W-1 and that at that time two persons were alighting the auto rikshaw in road, when the accused threatened the driver by abusing his caste and threatened him that if he stopped his auto rikshaw in the stand, he will face dire consequences.

2.8. P.W-8-Investigation Officer, who had deposed evidence regarding the procedure adopted in the investigation process. He was appointed by the proceedings of the Superintendent of Police, Madurai to investigate the case. The proceedings of the Superintendent of Police, Madurai, was marked as Ex.P-7. As per his deposition, he had visited the place of occurrence on 31.01.2015 at 06.30 a.m., and in the presence of witnesses prepared rough sketch and he had arrested the accused on 30.01.2015 at around 15.30 hours near Meenakshipuram railway gate and forwarded him to the Court of the learned Judicial Magistrate



2.9. On proper appreciation and assessment of evidence, the learned III Additional District and Sessions Judge, Madurai, convicted the accused under Sections 323 and 506(i) IPC r/w Section 3(1)(x) of SC/ST(POA) Act, and sentenced him to undergo three months rigorous imprisonment with fine of Rs.500/- for the offence under Section 506(i) IPC, in default, to undergo one week simple imprisonment and imposed a fine of Rs.500/- for the offence under Section 323 IPC, in default, to undergo one week simple imprisonment and sentenced to undergo six months rigorous imprisonment with fine of Rs.500/- for the offences under Section 3(1)(x) of SC/ST (POA) Act, in default, to undergo one month simple imprisonment.

3. Aggrieved by the judgment of conviction and order of sentence, the present appeal had been filed.

4. The learned Counsel for the appellant submitted that the independent witnesses were examined. The persons, who deposed evidence supporting P.W-1 and P.W-2, belong to the same community. Neutral witnesses not belonging to either of the parties, were not examined. The learned Trial Judge, ignoring those facts, had convicted the accused based on the evidence of P.W-1 and P.W-2. Except the de-facto complainant, as P.W-1 and his wife as P.W-2, none of the witnesses had stated in their evidence that they had heard the accused herein abusing the victim, P.W-1 using his community name.

5. P.W-2 is the wife of P.W-1. She was not at all present in the scene of occurrence and she had spoken in favour of her husband only with an intention to help her husband. The cross examination of P.W-1 and P.W-2 will prove that she was not available in the scene of occurrence. The learned Trial Judge convicting the accused under Sections 323 and 506(i) IPC r/w Section 3(1)(x) SC/ST(POA) Act is found not in accordance with the fair procedure. Therefore, the learned Counsel for the appellant seeks indulgence of this Court to set aside the judgment of conviction and the order of sentence.

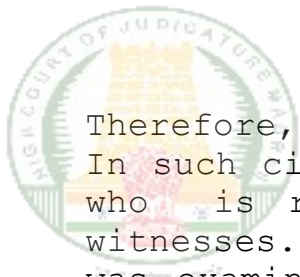
6. The learned Government Advocate had submitted his oral arguments. He submitted that P.W-1 and P.W-2 had cogently proved the occurrence through their evidence. It is true that P.W-3 remained hostile. But, the said witness had supported the prosecution case. Therefore, the judgment of the learned Special Judge (PCR cases), Madurai, is to be upheld. There is no material before this Court to interfere with the findings arrived at by the learned Trial Judge. This appeal lacks merits and is to be dismissed.

**7.Point for Consideration:**

Whether the judgment of conviction recorded by the trial Judge/learned Third Additional District and Sessions Judge, Madurai in Special Sessions Case No.65 of 2015 is perverse warranting interference by this Court as Appellate Court?

8.On perusal of the deposition, it is found that except the wife of P.W-1, who is the Auto Driver, none has corroborated the evidence of P.W-1. No independent witnesses had been examined to prove the case, attracting the offence under SC/ST (Prevention of Atrocities) Act. As per the evidence of P.W-1-de-facto complainant, he was attacked by the accused for driving Auto Rickshaw in the place where the accused was earning his livelihood as Auto Driver in Chekkanurani Bus Stop. Whereas in his cross-examination, he had stated that he did not take treatment in the Hospital. P.W-8-Investigation Officer had also admitted in his cross-examination that P.W-1 had not undergone any treatment in Hospital. Therefore, no medical record was obtained to support the allegation made in the prosecution case. No independent witnesses had been examined. P.W-2 is the wife of P.W-1, who had denied the suggestion that she was not present in the scene of occurrence at the time of occurrence. She had stated that she was working in a private Company. Therefore, she is not expected to be in the place of occurrence at the time of occurrence. P.W-3-Ramar turned hostile. P.W-4-Mahazar witness had mentioned nothing against the accused. P.W-5-Gajendran is the Tahsildar of SC and ST Welfare, who had spoken about issuance of caste certificate regarding the caste of the accused and de-facto complainant to the Investigation Officer. P.W-6-Krishnan-Sub Inspector of Police who had registered the First Information Report under Ex.P-6 based on the complaint given by P.W-1. P.W-7 is a relative of P.W-2, who had in her evidence stated that she had accompanied P.W-2 in search of a job for P.W-2. Considering the relationship of P.W-7, she is wantonly supporting P.W-2 as though she was present in the scene of occurrence, her evidence cannot be accepted. P.W-8-Deputy Superintendent of Police, is the Investigation Officer, who had spoken about the investigation and arrest of the Accused and after completion of the investigation, laying of the final report. He had denied the suggestion that the case was a foisted case and the investigation is a shoddy investigation.

9.Considering the fact that no independent witnesses were examined to prove the utterance of words attracting the Provisions of SC/ST (Prevention of Atrocities) Act, except P.W-1, P.W-2 and P.W-7. P.W-2 is the wife of P.W-1 and she was not available in the place of occurrence, at the time of occurrence, P.W-7 is a relative of P.W-1 and P.W-2. She admitted in cross examination that she helped P.W-2 to get a job in a private concern.



Therefore, P.W-7 is either relative or friend of P.W-1 and P.W-2. In such circumstances, P.W-2, who is the wife of P.W-1 and P.W-7, who is related to P.W-1 and P.W-2, are related or interested witnesses. Except P.W-2 and P.W-7 no other independent witness was examined. As per the evidence of P.W-1, P.W-8-Investigation Officer had admitted that the alleged occurrence took place in the evening in the Auto Stand at Chellampatti. No independent witnesses were examined. P.W-1 had in his evidence stated that people nearby separated the two groups of Auto rickshaw drivers during the clash. If that part of the evidence is considered, the Investigation Officer had not examined those people who intervened and separated the two groups of auto rickshaw drivers who clashed on the said date and time. In such circumstances, in the absence of evidence of independent witnesses to corroborate the evidence of P.W-1 except his wife and P.W-7-acquaintance, the finding of guilt recorded by the learned Sessions Judge is found to be perverse warranting interference by this Court. Therefore, the judgment of conviction recorded by the learned III Additional District and Sessions Judge, Madurai, is to be set aside.

In the result, the appeal is allowed.

The finding of guilt recorded by the learned III Additional District and Sessions Judge (PCR), Madurai in Special S.C.No.65 of 2015, dated 07.02.2017 and the judgment of conviction and order of sentence imposed under Section 323, 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-II)

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Sub Assistant Registrar(CS)

cmr/dh

To

1.The III Additional District and Sessions Judge (PCR), Madurai.

2.The Deputy Superintendent of Police,
Usilampatti,
Madurai District.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

CRL.A.(MD)No.77 of 2017
01.10.2021

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