



BAIL SLIP

The Appellant/Accused Namely, Vijayalakshmi W/o.Ragunadan aged about 42 Years in SC.NO.10/2018 dated 10.01.2020 of the Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal was released on bail by the order of this Court dated 31.01.2020 and made in Crl.MP.No.631/2020 in Crl.A.No.29 of 2020.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.04.2022
Pronounced on : 28.04.2022

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.29 of 2020

Vijayalakshmi

... Appellant/Accused

-vs-

The State Rep. By
The Deputy Superintendent of Police,
Namakkal Sub Division,
Namakkal District.
(Crime No.811 of 2015)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence dated 10.01.2020 passed by the learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal, in S.C.No.10 of 2018.

For Appellant : Mr.R.Vivekananthan
For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

J U D G M E N T

The present criminal appeal has been filed by the appellant to set aside the judgment of conviction and sentence dated 10.01.2020 passed by the learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal, in S.C.No.10 of 2018.

2. The appellant is the sole accused in the above referred case. He stood charged for the offence punishable under Sections 3(1)(x) and 3(1)(ii) of SC/ST (POA) Act, 1989. By judgment dated 10.01.2020, the learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal, found the accused guilty under Section 3(1)(x) of SC/ST (POA) Act and accordingly,



convicted her and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for six months. In respect to the charge under Section 3(1)(ii) of SC/ST (POA) Act, 1989 the learned Sessions Judge, acquitted the accused. Challenging the said conviction and sentence, the accused is before this Court, by way of filing this Criminal Appeal.

3.The case of the prosecution is as follows:

(i) The accused Vijayalakshmi was working as a class teacher of Class-II, in Namakkal Municipality Middle School at Ramapurampudur. PW3-Sasidaran, is the victim child studying in the above said school and PW1-Veerasamy is his father. PW1 and PW3 belongs to member of Scheduled Caste (Arunthathiar). On the other hand, the accused belongs to Kongu Vellala Gounder, a caste Hindu member. On 12.11.2015 at about 3.00pm, when one of the student Mohamed Sheriff attended his natural call in his trouser itself, the accused teacher compelled PW3 to remove a piece of faeces by saying 'சக்கிலி பயலே அந்த மலத்தை அள்ளி போடுடா' and obliging the instructions given by the accused, PW3 removed the piece of faeces and after seeing the same the other students laughed.

(ii) After the said incident, PW3, returned to his house and narrated the entire incident to his parents so that on 13.11.2015 around 9 am, PW1 went to the school and asked the accused teacher, who inturn refused to the same and told to get back the transfer certificate of his son. The officials of the school education department enquired the same and initiated a departmental action against the accused. In this regard, PW1 lodged the complaint before the police officials.

(iii) On receipt of the complaint given by PW1, PW18-Mr.Gopalakrishnan, the then Sub-Inspector of Police attached to the Namakkal Police Station registered a case as against the appellant/accused in Cr.No.811 of 2015 under Section 3(1)(x) of SC & ST (POA) Act. The complaint given by PW1 and the printed FIR were marked as Ex.P1 and P10 respectively. After registering the case, PW18 sent a letter to the Superintendent of Police, Namakkal for appointing an investigation officer to investigate the case.

(iv) Later, PW19 Mr.Manoharan, the then Deputy Superintendent of Police, Namakkal, in view of the order passed by the Superintendent of Police in Na.Ka.No.G4/1820/30324/2015 dated 13.11.2015 took up the investigation and visited the scene of occurrence. In the presence of witnesses, he prepared an observation mahazar under Ex.P12. He had drawn the rough sketch and the same has been marked as Ex.P13. He examined the witnesses and recorded their statements.



(v) On 13.11.2015 around 16.00 hours, PW19 arrested the accused and sent her to the judicial custody. He submitted a letter to PW14, for issuing a caste certificate to the accused as well as to the victim child. In turn, after getting report from PW14-Mr.Suresh, the then Village Administrative Officer and PW15-Gnanaraj, the then Revenue Inspector, PW16 issued a community certificate under Ex.P8 stating that the appellant/accused belongs to Kongu Vellalar Community. Similarly, he issued a community certificate under Ex.P9 stating that victim child Sasidaran belongs to Hindu Arunthathiyar community.

(vi) After receipt of the same PW19 came to the positive conclusion that the accused herein committed an offence under Section 3(1)(x) and 3(1)(ii) of SC/ST POA Act and he filed a final report, accordingly.

4. Based on the above materials, the trial Court framed the charges under Sections 3(1)(x) and 3(1)(ii) of SC/ST POA Act and the accused denied the same. She opted for trial. In order to prove their case, on the side of the prosecution as many as 19 witnesses were examined as PW1 to PW19 and fourteen documents, were marked as Ex.P1 to Ex.P14.

(i) Out of the said witnesses, PW1-Mr.Veerasingam is the father of the victim child. He has spoken about the occurrence as on 13.11.2015, his son made a complaint about the accused / appellant stating that she has instructed him to remove the piece of faeces in the classroom. Later he enquired the same with the school and lodged a complaint.

(ii) PW2-Tmt.Revathi, is the mother of the victim child. She has also deposed that her son informed about the occurrence and after coming to know that the accused alone instructed her son to remove the piece of faeces, her husband-PW1 lodged a complaint before the police.

(iii) PW3-Master Sasidaran was testified about his maturity and after understanding his capacity to give evidence under Section 118 of Indian Evidence Act, he was examined as PW3 before the trial Court. He spoke about the occurrence that on 12.11.2015 around 3.00pm, when he was in the school, the accused who was working as class teacher told to him to remove the piece of faeces belonged to another student viz., Mohammed Sheriff lying in the class room. He further gave evidence before the trial Court as at the time when he refused to do so, the accused teacher-Vijayalakshmi threatened him by showing stick and saying that 'சக்சிலி பயலே அந்த மலத்தை அள்ளி போடுடா ' in front of other students and after seeing the said occurrence, all the students present there laughed. According to him, he only removed the piece of faeces belonged to another student and threw away the same outside the class room and washed away his hands. Thereafter, he informed the said occurrence to his mother immediately on the



same day itself and later informed to his father on the next day around 5.00am.

(iv) PW4-Mr.Senthilraj, the then English teacher and in-charge of Head Master has spoken about the occurrence as during the relevant point of time, the child witness Mohammed Sheriff had told before the enquiry officials that on 12.11.2015 in the afternoon, as per the instructions given by the accused, PW3 removed the piece of faeces and threw the same outside the classroom.

(v) PW5-Tmt.Nithya Kalyani, PW6-Tmt.Saraswathi and PW7-Tmt.Velvizhi are all the teachers working in the same school. They have deposed that they were standing outside the enquiry room where the education officers and Deputy Superintendent of Police enquired about the incident.

(vi) PW8-Master Mohamed Sheriff, was testified about his maturity under Section 118 of Indian Evidence Act and he had deposed that he came before the Court to give evidence about the incident happened in the year of 2015, when he studied in the same school. According to him, he does not know about who directed to whom to remove his faeces in the classroom. However, he acknowledges that the accused is his teacher in the same school.

(vii) PW10-Master Kavnilavu was also testified about his maturity under Section 118 of Indian Evidence Act. He has deposed that on 12.11.2015 around 3.00pm, when he studied in II standard in Namakkal Municipality Middle School at Ramapurampudur, the accused teacher told to PW3 to remove the piece of faeces belonged to another student Mohamed Sheriff lying in the class room. He would further state that the accused did not abuse PW3, by mentioning the caste name.

(viii) PW11-Mr.Silambarasan, who stood as a witness for the preparation of the observation mahazar has spoken about the occurrence as on 13.11.2015 around 1.00pm, the investigation officer in this case prepared the observation mahazar in his presence. PW12-Tmt.Athilakshmi, is the hearsay witness.

(ix) PW13-Mr.Allimuthu, working as a District Primary Education Officer at Namakkal has deposed that on 13.11.2015, when at the time he attended the review meeting at the Directorate of Education Department, Chennai, he received the information as if the accused asked the student Sasidaran to remove faeces belonged to another student viz., Mohammed Sheriff.

(x) PW14-Mr.Suresh, PW15-Mr.Gnanaraj and PW16-Mr.Sakthivel are the revenue officials spoken about the issuance of community certificate to the accused as well as to PW3.



(xi) PW18-Mr.Gopalakrishnan and PW19-Mr.Manoharan are the police officials spoken about the registration of the case, investigation and about the filing of the final report.

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5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. However, none has been examined on her side as a defense witness.

6. Having considered all the above, the learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal, convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Aggrieved over the said conviction and sentence, the appellant is before this Court, with this Appeal.

7. I have heard Mr.R.Vivekananthan, learned counsel appearing for the appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.Side), appearing for the State and also perused the records carefully.

8. The learned counsel appearing for the appellant would contend that in the present case, during the time of investigation, the investigation officer has not followed Rule 7 of SC and ST (POA) Rules, 1995 which is mandatory in nature. Secondly, in respect to the abusive words alleged to be spoken by the accused, the evidences recorded from the prosecution witnesses are having a lot of contradictions. Therefore, convicting the accused by the trial Court under Section 3(1)(x) of SC/ST POA Act, is erroneous and liable to be set aside.

9. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police would submit that the minor contradictions found in the evidence given by the occurrence witnesses cannot be taken into account for considering the case in favour of the accused. According to him, the evidence given by the prosecution witnesses would be sufficient to accept the case of the prosecution as the prosecution has proved its case beyond reasonable doubt.

10. The submissions made by the learned counsel appearing on either side are considered. Initially, being the reason that the accused herein was convicted under Section 3(1)(x) of SC/ST POA Act, it would be necessary for the prosecution to prove that the victim child belongs to the community which is recognised as a Scheduled Caste and also that the accused who committed the offence belongs to the caste of 'Hindu'.

11. In this regard, PW14-Suresh, the then Village Administrative Officer, PW15-Mr.Gnanaraj, the then Revenue Inspector, PW16-Mr.Sakthivel, the then Deputy Thasildhar and PW17-Mr.Kathiresan, the then Special Thasildar, had given evidence as the accused belongs to the caste Hindu and the



victim child i.e. PW3 belongs to Scheduled Caste (Arunthathiyar). Further, the certificates issued by PW16 and PW17 were marked as Ex.P8 and Ex.P9 respectively and the same corroborates the evidence given by those witnesses.

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12. In respect to the evidence given by the above said witnesses, there is no denial on the side of the accused as they gave a false evidence as to the community belongs to the accused and victim child. Accordingly, this Court comes to the conclusion that the prosecution has initially proved the case of the victim as he belongs to the Scheduled Caste community and also accused belongs to the caste Hindu.

13. Secondly, on going through Section 3(1)(x) of SC/ST POA Act, it reads as follows;

"Intentionally insults or intimidates with the intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view".

14. Accordingly, to attract the proviso to clause (x) to Sub-Section (1) of Section 3 of the Act, the following ingredients are very much essential:

1. The person who is accused of shall not be a member of the Scheduled Caste or Scheduled Tribe;
2. The person who is aggrieved shall be a member of the Scheduled Caste or Scheduled Tribe;
3. Criminal intention to insult or intimidate or to humiliate;
4. The occurrence should have taken place in any place within public view.

15. Now, in this regard as rightly pointed out by the learned Government Advocate (Crl.Side) appearing for the State, that the prosecution has proved its case that the accused belonged to the caste Hindu and the victim child belongs to scheduled caste and thus, the prosecution has proved condition Nos. 1 and 2.

16. In respect to condition No.4 also, the witnesses examined on the side of the prosecution gave a categorical evidence that the alleged occurrence had happened in the school, which is a 'public place'. Further, PW10-Master Kavinilavu, who is one of the student studying in 2nd standard gave evidence as the alleged occurrence had happened in his presence. Therefore, the said evidence is sufficient to believe that the alleged occurrence had happened within public view.



17. In the said occasion, in respect to condition No.3, it would be necessary for the prosecution to show that the accused is having the criminal intention to insult or intimidate or to humiliate the victim child. In this regard, in Ex.P1 complaint, PW1 has clearly stated that during the relevant point of time, the accused with the intention to insult his son, directed to remove the piece of faeces by saying 'சக்கிலி பயலே அந்த மலத்தை அள்ளி போடா'.

18. Though it was stated by PW1 in the complaint as above, the said complaint has been prepared by him as per the information given by his son PW3 and therefore, it cannot be concluded that PW1 is the occurrence witness and his evidence cannot be termed as an eye witness to the occurrence. Therefore, the said averments found in the complaint is not a substantial evidence to prove the case of the prosecution.

19. As rightly pointed out by the learned counsel appearing for the accused that PW1's evidence is upon the information given by PW3, the said evidence cannot be taken into account for accepting the case of the prosecution, particularly in respect to the occurrence. In the same way, PW2 also being the mother of PW3 gave evidence in support of the case of the prosecution and therefore, her evidence also cannot be taken into account for accepting the case of the prosecution in toto.

20. Here it is case, in order to prove the occurrence, before the trial Court, PW8-Master Mohamed Sheriff, PW9-Master Sivanesan and PW10-Master Kavinilavu were examined as eyewitnesses. All of them were examined by the trial Court after testifying their capacity to give evidence under Section 118 of the Indian Evidence Act.

21. In this occasion, on going through the evidence given by PW3, he has stated before the trial Court as during the relevant point of time, the accused after showing the stick, threatened him by mentioning his caste name and instructed to remove the piece of faeces, which belongs to another student Mohamed Sheriff.

22. Though, he has stated the occurrence as above, in his cross examination, he has stated that the faeces fell on the floor, was not seen by anybody, who all are present in the class room. If such evidence is a true one, then, there is no necessity for the accused to direct PW3 to remove the piece of faeces. Therefore, the evidence given by PW3 cannot be termed as a conclusive evidence for accepting the case of the prosecution. Therefore, it is not safe to base the conviction on the sole evidence given by PW3 unless some corroboration is found in the evidence of other witnesses.



23. As already stated here it is a case before the trial Court three other witnesses are examined on the side of the prosecution as an eyewitness to the alleged occurrence. Among which PW8-Master Mohammed Sheriff did not say about the occurrence as stated by the prosecution. Similarly, PW9- Master Sivanesan also has not supported the case of the prosecution. On the other hand PW10 Master Kavinilavu has spoken about the occurrence as during the relevant point of time, the appellant/accused herein instructed PW3 to remove the piece of faeces. However, in respect to the said allegation, the trial Court after framing the charge under Section 3(1)(ii) of SC/ST (POA) Act, acquitted the accused. In otherwise, in respect to the charge under Section 3(1)(x) of the SC/ST (POA) Act, the said PW10 gave evidence as during the time of occurrence the accused has not abused PW3. Therefore, in order to prove the occurrence, the evidence given by PW3 alone is available, that too, the same is not a wholly reliable evidence.

24. The another one aspect in this case is that after the occurrence, the superior officers of the accused initiated departmental enquiry by appointing one Malathi. After completing the enquiry, a report has also been filed before PW13-Alimuthu, who is the District Educational Officer. Here it is a case, PW13, gave evidence in respect to the initiation of enquiry, but for the reasons best known to him, he has not produced the enquiry report which was produced by the enquiry officer Mrs.Malathi. In fact the said Mrs.Malathi was not examined as a witness before the trial Court. More than that PW13 in his cross examination has clearly stated that in the enquiry report, it was stated by the enquiry officer that no such occurrence had happened as during the relevant point of time, the appellant/accused abused PW3 by mentioning his caste name.

25. Therefore, culling out the entire evidence given by the prosecution witnesses would create a doubt whether the alleged occurrence had happened as stated by the prosecution or not. Being the reason that the evidence given by the victim child was categorised as the same is not wholly reliable, it is not safe to convict the accused based on the said evidence alone.

26. The another submission made by the learned counsel appearing for the appellant is that after violating Rule 7(2) of the SC and ST (POA) Rules, 1995 the investigation officer filed a final report in this case, beyond the period of 60 days, which amounts to disbelieve the case of the prosecution. In this regard, he relied on the judgment of this Court reported in 2015 SCC OnLine Mad 14190 [Periyasamy and Another Vs. State Rep. By the Deputy Superintendent of Police, Avinashi Sub Division] and 2016 SCC OnLine Mad 3048 [V.Ponnusamy vs. State Rep. By Deputy Superintendent of Police, Palladam Range].



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27. Rule 7 (2) of SC and ST (POA) Rules, 1995, reads as follows:

7. Investigating Officer.-

(1)

•(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within sixty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director-General of Police of the State Government.

(3)"

28. In the above referred cases, this Court has concurrently held that it is mandatory for the investigation officer to complete the investigation within the period which is stipulated under section 7(2) of the SC and ST (POA) Rules. But herein it is a case, after registering the case on 13.11.2015, final report has been filed only on 23.02.2016, which is beyond the period of 60 days. Though, it was stated by the investigation officer as he got permission for extending the period of investigation, the said order has not been produced before the trial Court, which shows that the investigation officer in this case has given a false evidence. Therefore, in that score also the prosecution fails in its attempt to prove the case by following the procedural law.

29. Hence, in the light of the above discussions, I am of the considered opinion that the prosecution has failed in its attempt to prove its case beyond reasonable doubt and the trial Court without considering those aspects, convicted the accused, which is liable to be set aside.

30. Accordingly, the appeal is allowed. The conviction and sentence imposed upon the appellant/Accused, by the learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal, in S.C.No.10 of 2018 dated 10.01.2020, is set aside. The appellant/Accused, is acquitted of the charges and she is directed to be set at liberty forthwith unless her custody is required in connection with any other case. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant/Accused.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



1. The Sessions Judge,
Special Court for SC & ST (POA) Act,
Namakkal.
2. The Deputy Superintendent of Police,
Namakkal Sub Division,
Namakkal District.
3. The Superintendent of Police,
Central Women Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The Principal Sessions Judge,
Namakkal.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Vivekanandhan, Advocate, S.R.No.30182 [20/06/2022]

Criminal Appeal No.29 of 2020

gp (CO)
A.SK (28/04/2022)