



Bail Slip

The Appellant/Accused namely N. Kumar @ Sivakumar, S/o.Nangooran Udaiyar, was directed to be released on bail and by the order of this Court dated 02.08.2019 and made in Crl.M.P.No.10727/2019 in Crl.A. No. 489/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.08.2021
PRONOUNCED ON : 12.01.2022

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.489 of 2019
and Crl.M.P.No.10725 of 2019

N.Kumar @ Sivakumar

..Appellant

.Vs.

State rep by
Deputy Superintendent of Police,
Thirukovilur Sub Division,
Pagandaikuttu Salai Police Station,
Crime No.84 of 2017.

..Respondent

Criminal Appeal filed under Section 374 of Code of Criminal Procedure to set aside the conviction and sentence imposed upon the appellant in Special S.C.No.67 of 2017 dated 23.07.2019 on the file of the learned Special Judge for SC/ST Cases, Villupuram.

For Appellant	:	Mr.V.Krishnamoorthy
For Respondent	:	Mr.S.Sugendran Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Appeal has been filed against the judgment dated 23.07.2019 passed in Spl.S.C.No.67 of 2017 by the learned Special Judge, Special Court for SC/ST Cases, Villupuram.

2.The case of the prosecution is that on 13.05.2017 at about 7.30 hours P.W.1/Munian was standing in front of the house of P.W.5/Nangooran and talking with him, at that time the



appellant/accused herein came to that place and questioned P.W.5 as to why his brother did not take care of his sister and his child and that there was a quarrel arose between them and when P.W.1/de facto complainant resisted the same, the appellant abused P.W.1 by using his caste name in the presence of others and assaulted him with stones and also threatened him. Hence, P.W.1 filed a complaint/Ex.P1 against the appellant.

3.The respondent/police registered a case in Crime No.84 of 2017 against the accused/appellant for the offence punishable under Sections 294(b), 324 and 506(2) IPC and also under Section 3(1)(r)(s) and 3(2)(va) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015 [hereinafter 'SC/ST (POA) Act 2015' for the sake of convenience]. After completion of the investigation, the respondent/police filed a charge sheet against the appellant for the offence under Sections 324, 506(ii) IPC and Sections 3(1)(r)(s) SC/ST (POA) Act 2015 before the learned Judicial Magistrate, Thirukoilur. Thereafter, on appearance of the accused, the copies of the documents relied on by the prosecution were furnished to the accused under Section 207 of Cr.P.C., finding that the case was triable by the Court of Sessions, the learned Magistrate committed the case to the file of the learned Principal District and Sessions Judge, Villupuram and made over to the learned Special Judge, Special Court for SC/ST Cases, Villupuram and the same was taken on file in Spl.S.C.No.67 of 2017.

4.In order to prove the case of the prosecution before the trial Court, on the side of the prosecution as many as 11 witnesses were examined as P.W.1 to P.W.11 and marked 9 documents as Exs.P1 to P9 and one material object was marked as M.O.1. After examining the prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused/appellant and questioned under Section 313 of Cr.P.C. and he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5.The Court below, after hearing the arguments advanced on either side and also materials available on record, found that the accused/appellant is not guilty for the offence under Section 506(2) IPC and acquitted him from the above said charge. However, the Court below found guilty for the offence under Section 324 IPC and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of



Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months; and also for the offence under Sections 3(1)(r)(s) SC/ST (POA) Act 2015 and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for a period of three months; and also directed to pay a sum of Rs.5,000/- to the complainant/P.W.1 as compensation in default to undergo simple imprisonment for a period of three months. Being aggrieved by the said judgment of conviction and sentence, the appellant is before this Court.

6.The learned counsel for the appellant submitted that all the witnesses are interested witnesses and most of them are belonging to the same community of the de facto complainant/P.W.1 and no independent witness was examined to prove the charges against the appellant. He would further submit that the appellant herein had given a complaint against P.W.1 and his sisters, for which a counter case in Crime No.85 of 2017 was registered and subsequently, charge sheet was also filed and the same is pending for trial and hence, both this case and the counter case have to be tried together, otherwise it would cause prejudice to the appellant. He would further submit that while P.W.1 has deposed, his brother and wife was along with him, but, his wife was not examined as a prosecution witness and the same is fatal to the case of the prosecution. Further, the brother-in-law of P.W.1, who was in the house at the time of occurrence, did not accompany with P.W.1 to the hospital and also blood stained shirt of P.W.1 was not seized and produced before the Court. He would further submit that P.W.2, who is an eye witness to the said occurrence had stated that P.W.1 sustained injury, while he tried to prevent fight between the appellant and P.W.5/Nangooran and also stated that there is no previous enmity between the appellant and P.W.1. Even P.W.2 did not support the prosecution case for the offence under SC/ST (POA) Act 2015. Since there is a dispute in the family life of the P.W.5's sister and the appellant's brother, a false case has been foisted against the appellant and there is no evidence on the side of the prosecution. The trial Court, without considering the lack of evidence on the side of the prosecution, has erroneously found that the appellant/accused is guilty under Section 324 IPC and Sections 3(1)(r)(s) SC/ST (POA) Act 2015. Therefore, the judgment of conviction and sentence imposed on the appellant by the trial Court is liable to be set aside and the present appeal is to be allowed.

7.The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the de facto complainant and



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the accused are known persons and hence, there was no dispute in identification. P.W.1 is the injured witness and he has clearly deposed that in the presence of the others, the appellant scolded by uttering the caste name and assaulted with stones and caused injuries. Further, the medical evidence also corroborated the evidence of P.W.1. Since the trial Court found that there was no threat or inducement, acquitted the appellant for the offence under Section 506(ii) IPC, however, convicted the appellant for the offence under Section 324 IPC and also under Sections 3(1)(r)(s) SC/ST Act, 2015. Considering the materials that P.W.1 is the injured witness and medical evidence also corroborated the evidence of P.W.1 and also other dependent witnesses also supported the case of the prosecution, there is no merit in the appeal. Therefore, the trial Court has rightly convicted the appellant and hence, the appeal is liable to be dismissed.

8. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

9. This Court, being an Appellate Court, is the final Court of fact finding and hence, it is necessary to re-appreciate the entire evidence and give an independent finding.

10. The injured witness was examined as P.W.1 and he had clearly deposed that there was a quarrel between P.W.5's sister and the appellant's brother and when he advised them to stop the quarrel, the appellant scolded him in the public place by uttering caste name and also assaulted him with stones, due to which, he sustained injuries and hence, he preferred the complaint/Ex.P1.

11. P.W.2, who is the neighbour of the accused and the victim, had deposed that on the date of occurrence, there was a quarrel between the accused and P.W.5 and at that time P.W.1 tried to pacify them, but, the appellant scolded P.W.1 and also attacked on his head with stones and thereafter, he was taken to the Government Hospital, Sankarapuram and the respondent/police enquired him.

12. P.W.3, who is the neighbour of the victim and the appellant and P.W.4, who is the nephew of the victim are only hearsay witnesses and they turned hostile and not supported the case of the prosecution.



13. P.W.5, one Nangooran is the relative of the appellant had deposed that the appellant's brother and P.W.5's sister are husband and wife. There was a family dispute between them. On the date of occurrence, when P.W.5 questioned the appellant about his sister's life, a quarrel arose between them and when P.W.1 tried to pacify the same, the appellant in the presence of others abused the victim by using his caste name and assaulted him with stones and that P.W.1 sustained injuries.

14.P.W.6 had deposed that the appellant and the victim belongs to his village and he did not know about the said incident and he had turned hostile.

15.P.W.7 had deposed about having attested in the observation mahazar/Ex.P2 and also the seizure mahazar/Ex.P3 for recovery of stone/M.O.1.

16.P.W.8 had deposed about the issuance of the community certificate to the appellant and the victim. P.W.9 is one of the police officials, who had spoken about the registration of the case.

17. P.W.10 is the Doctor, who gave treatment to P.W.1/injured witness and he had clearly spoken about the admission of P.W.1 in the hospital and at that time P.W.1 had informed that one known person attacked him with stones and he had spoken about the injuries sustained by P.W.1.

18. From the evidence of P.W.1/injured witness, P.W.2/eye witness to the occurrence and P.W.10/Doctor, who had given treatment to the victim, the prosecution has proved its case beyond all reasonable doubts. Further, P.W.1 himself deposed about the injuries sustained by him and his evidence is corroborated with the evidence of P.W.2 and P.W.10. Therefore, the prosecution has proved that the appellant committed the offence under Section 324 IPC.

19.This Court, being an Appellate Court, which is the final Court of fact finding, independently re appreciated the entire evidence and found that the evidence of P.W.1 is cogent, consistent and genuine, which inspires the confidence of this Court and there is no perversity in the judgment of the trial Court and there is no reason to take a different view and discard the evidence of P.W.1.



20. Considering the above facts and circumstances, this Court finds that the prosecution has proved its case beyond all reasonable doubts for the offence under Section 324 IPC and Section 3(1)(r)(s) of SC/ST (POA) Act, 2015 and there is no merit in this appeal.

21. In fine, this Criminal Appeal deserves to be dismissed and accordingly, the same is dismissed. The conviction and sentences passed in Spl.S.C.No.67 of 2017 dated 23.07.2019 by the learned Special Judge for SC/ST Cases, Villupuram. is confirmed. If the appellant/accused is not in duress, the trial Court is directed to take appropriate steps to secure the appellant to serve the remaining period of sentence.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Special Judge,
Special Court for SC/ST Cases,
Villupuram.

2.The Deputy Superintendent of Police,
Thirukovilur Sub Division,
Pagandaikuttu Salai Police Station,

3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer		with a direction to send back the
(Criminal Section),		original records, if any, to the
High Court, Madras.		trial Court

CRL.A.No.489 of 2019

KSM(CO)
SP(16/02/2022)