



BAIL SLIP

The Appellant/Accused namely Mr.Lakshmanan, S/o.Chinnarasu Gounder, was directed to be released on bail as per order of this Court dated 03.10.2019 in CrI.M.P.14200 of 2019 in CrI.A.669 of 2019 on the file of this Court and subsequently, by order dated 19.03.2021, the suspension of sentence was cancelled.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2021

DELIVERED ON : 07.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRL.A.NO.669 OF 2019

Lakshmanan

... Appellant/
Accused

Vs.

The State represented by
The Deputy Superintendent of Police,
Villupuram Sub Division,
Periyathachur Police Station,
Villupuram District.
(Crime No.122 of 2009)

... Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 22.08.2019, in Spl.S.C.No.135 of 2015, on the file of the Special Judge, Special Court for Trial of Scheduled Caste and Scheduled Tribe Cases at Villupuram, Villupuram District.

For Appellant : Mr.G.Vigneshwar
for M/s.A.Udhaya Chandiran

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



J U D G M E N T

This Criminal Appeal is filed against the judgment of conviction and sentence, dated 22.08.2019, in Spl.S.C.No.135 of 2015, on the file of the Special Court for Trial of Scheduled Caste and Scheduled Tribe Cases at Villupuram, Villupuram District.

2.The respondent Police registered a case in Crime No.122 of 2009 against the appellant for the offences under Sections 294 (b), 506(ii) IPC r/w. Sections 3(1)(x) and (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ("SC/ST Act" for brevity). After the investigation, the respondent Police filed a charge-sheet before the learned Judicial Magistrate, Tindivanam. The learned Judicial Magistrate had taken the charge-sheet on file in P.R.C.No.21 of 2009.

3.After completing the formalities under Section 207 Cr.P.C., the learned Judicial Magistrate committed the case to the Principal District and Sessions Judge, Villupuram, since the offences are exclusively triable by the Court of Session. The learned Principal District and Sessions Judge had taken the case on file in S.C.No.225 of 2013 and subsequently, the said case was transferred to the Special Court for Trial of Scheduled Caste and Scheduled Tribe Cases at Villupuram, since the offences are against the members of Scheduled Caste community.

4.The learned Special Judge had taken the case on file in Spl.S.C.No.135 of 2015 and framed the charges against the appellant for the offences under Sections 294(b), 506(ii) IPC r/w. Sections 3(1)(x) and (xi) of SC/ST Act.

5.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 9 documents were marked as Exs.P1 to P9. No Material Object was exhibited.

6.On completion of examination of prosecution witnesses, the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant, by questioning under Section 313 Cr.P.C. However, he denied the same as false and pleaded "not guilty".

7.On the side of the defence, no oral or documentary evidence was produced.

8.On completion of trial and on hearing the arguments advanced on either side and on perusal of the entire materials on record, the trial Court, by judgment dated 22.08.2019, found



the appellant not guilty of the offence under Section 294(b) IPC and acquitted him for the offence under Section 294(b) IPC, however, found the appellant guilty of the offences under Sections 506(ii) IPC and Sections 3(1)(x) and 3(1)(xi) of the SC/ST Act and convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 506(ii) IPC	A fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months
Section 3(1)(x) of SC/ST Act	Rigorous Imprisonment for one year and a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months
Section 3(1)(xi) of SC/ST Act	Rigorous Imprisonment for two years and a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for three months
The sentences shall not run concurrently.	

9.Challenging the said judgment of conviction and sentence, the appellant has filed the present appeal before this Court.

10.The learned counsel for the appellant would submit that the appellant never misbehaved or abused P.W.1 or P.W.2 by using their caste name. Originally, the case was registered for the offences under Sections 294(b), 323 & 506(ii) IPC r/w. Section 3(1)(xi) of SC/ST Act and only subsequently, Section 3(1)(x) of SC/ST Act was incorporated, which is against law and the appellant is prejudiced by the same. Further, P.Ws.3, 4, 5 and 6 have not supported the case of the prosecution.

11.The learned counsel for the appellant would further submit that there is a delay in filing the complaint, for which, there is no proper explanation and P.Ws.5 and 6 turned hostile and have not supported the case of the prosecution. He would further submit that there is no independent witness to prove the occurrence. The learned counsel would further submit that the trial Court failed to appreciate the same and simply on the ground of sympathy, the appellant has been convicted, and therefore, there is perversity in appreciation of evidence by the trial Court. He would further submit that there are material contradictions which would go to the root of the case of the prosecution, however, the trial Court failed to consider the same and erroneously convicted the appellant, which warrants interference by this Court. Therefore, the learned counsel would submit that the judgment of conviction and sentence is



liable to be set aside.

12.The learned Government Advocate (Crl. Side), appearing on behalf of the respondent, would submit that, P.W.1 and P.W.2 are the members of Scheduled Caste community. The appellant is a non-member of the Scheduled Caste community. While P.W.1 was sleeping outside her house with her children, on the date of occurrence, at about 10 'o clock, the appellant came to the house of P.W.1 and molested her and tried to commit rape on her. Immediately, P.W.1 raised an alarm. P.W.2, the husband of P.W.1, rushed to the place and on seeing P.W.2/husband of P.W.1, the appellant threatened him of dire consequences and humiliated them by mentioning the caste name in the public. On hearing the sound of P.W.1, P.W.3 and P.W.4, who are the neighbours, came to the place and saw that there was a wordy quarrel between P.Ws.1 and 2 and the appellant. Subsequently, P.W.1 lodged a complaint (Ex.P1) and after investigation, the respondent Police laid a charge-sheet and after completing the formalities, the matter went for trial and the trial Court appreciated the entire evidence, especially the evidence of P.Ws.1 to 4 and 9, and found the appellant guilty and convicted and sentenced him. Therefore, the learned Government Advocate would submit that there is no merit in the present appeal and the same is liable to be dismissed.

13.Heard the learned counsel on either side and perused the materials available on record.

14.The case of the prosecution is that, on 09.05.2009, at about 10.00 p.m., when P.W.1 was sleeping outside her house along with her children, the appellant came to the house of P.W.1 and tried to misbehave with her. When P.W.1 raised an alarm, P.W.2/husband of P.W.1, rushed to the place and questioned the appellant for his misbehaviour, for which, the appellant threatened P.W.2 with a weapon by saying that he would kill him and enjoy with his wife and if anyone approaches the Police, he would destroy their entire family. Therefore, the appellant has committed the offences charged against him as above.

15.This Court, being an Appellate Court, is the final Court of fact finding. It has to re-appreciate the entire evidence and give an independent finding. Accordingly, this Court has also gone through the entire materials and has re-appreciated the entire evidence and gives its independent findings.

16.In order to substantiate the charged offences against the appellant, before the trial Court, the prosecution examined totally 11 witnesses and marked 9 documents.



17. Out of the 11 witnesses, the de facto complainant (P.W.1), who is the victim in this case, has stated in her complaint that, on the date of occurrence, she along with her children, were sleeping in front of her house, at that time, the appellant came to the place and misbehaved with her and molested and tried to commit sexual assault; when she shouted at him, after hearing her shouting noise, P.W.2, her husband, rushed to the place and seeing him, the appellant threatened him of dire consequences and left the place; on hearing the shouting noise of P.W.1, the neighbours P.Ws.3 and 4 came to the place; they saw that there was a wordy quarrel between the appellant and P.Ws.1 and 2.

18. When the de facto complainant was examined as witness before the trial Court as P.W.1, she has deposed the same as mentioned in her complaint.

19. P.W.2, the husband of P.W.1, in his evidence, has deposed that, when his wife (P.W.1) and children were sleeping outside of their house, at that time, the appellant came to the house of P.W.1 and misbehaved with his wife, also molested his wife and after hearing the noise, he rushed to the place and on seeing him, the appellant threatened him of dire consequences and left the place and he also humiliated them by using the caste name in the public. Therefore, on the complaint given by P.W.1 (Ex.P1), the respondent Police registered a case against the appellant.

20. It is clear from the evidence of P.W.1 and P.W.2 that the occurrence has been proved. From the evidence of P.W.3 and P.W.4, the presence of the appellant at the time of occurrence in the place of occurrence is proved. Though the other witnesses turned hostile, from the evidence of P.W.9, it is proved that P.Ws.1 and 2 are the members of Scheduled Caste community and the appellant is a non-member of Scheduled Caste community.

21. Though, the learned counsel for the appellant submitted that the complaint was lodged belatedly after one day and there was no explanation for the delay in filing the complaint, on a reading of the materials, deposition of P.W.1 and P.W.2, the reason for the delay is clearly explained. Normally, in cases of this nature, especially in villages, after the occurrence, the suppressed community people would approach the elders of the family and make their complaint and they conduct a panchayat and try to pacify the matter, since it is the custom of most of the villages in India. In that way, mere delay in filing the complaint before the Police is not fatal to the case of the prosecution. P.W.1-victim and P.W.2, being suppressed community persons and illiterates, normally, would be very much afraid of the Police and reluctant to go to the Police Station. Only with



the help of any literate or other elders or advisors, they can move. Therefore, mere delay in filing the complaint is not fatal to the case of the prosecution.

22. Another point raised by the learned counsel for the appellant is with regard to independent witnesses and that the Mahazar witnesses turned hostile. Merely because the Mahazar witnesses and other witnesses turned hostile, the evidence of the victim cannot be simply thrown away without any reason. Though P.Ws. 3 and 4 have stated that they have not seen at the time of molestation committed by the appellant on P.W.1, they have stated that, on hearing the shouting noise of P.W.1, they came out from their house and saw that the appellant was present there and there was wordy quarrel between the appellant and P.Ws.1 and 2. Therefore, from the evidence of P.Ws.1 to 4, there is enough material to show that the appellant was present at the time of occurrence at the place of occurrence and he has not explained why he had gone to that place at that time. Further, P.W.1 is the member of Scheduled Caste community, being a women, and in the villages, most of the villagers used to sleep at the outside of their house and taking advantage of that, the appellant who is claimed to be a member of upper caste, misbehaved with P.W.1 and normally, in the villages, the independent witnesses would not support the Scheduled Caste community people especially for registering criminal cases before the Police or Court. Therefore, merely because other witnesses turned hostile and there is no independent witness, this Court cannot simply ignore the evidence of the victim.

23. This Court, being an Appellate Court, which is a fact finding Court, has re-appreciated the entire evidence and on a joint reading of the evidence of P.Ws.1 to 4 and 9 and the complaint (Ex.P1), has come to the conclusion that the appellant has committed the charged offences except Section 294(b) IPC and the trial Court rightly appreciated the evidence and found him guilty of the offences and this Court does not find any perversity in appreciation of evidence by the trial Court and there is no merit in the appeal and the appeal is liable to be dismissed.

Accordingly, this Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the trial Court is confirmed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

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Sub Assistant Registrar



To

1. The Special Judge,
Special Court for Trial of Scheduled Caste
and Scheduled Tribe Cases at Villupuram,
Villupuram District.
2. The Deputy Superintendent of Police,
Villupuram Sub Division,
Periyathachur Police Station,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.
4. The Deputy Registrar | with a direction to send back the
(Criminal Section), | original records to the trial
if any, immediately High Court, Madras.
5. The Judicial Magistrate
Tindivanam.
6. The Principal District and Sessions Judge,
Villupuram.
7. The Central Prison,
Cuddalore.

Crl.A.No.669 of 2019

SRA (CO)
PM/07/02/2022