

Jones Vs. State

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Court : Chennai

Decided On : Feb-20-2004

Reported in : 2004CriLJ2755

Judge : A.K. Rajan, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(1); Code of Criminal Procedure (CrPC) , 1974 - Sections 439

Appeal No. : Crl. O.P. Nos. 3608 and 3623 of 2004

Appellant : Jones

Respondent : State

Advocate for Def. : M.K. Subramanian, Govt. Adv. (Crl. side)

Advocate for Pet/Ap. : N. Srinivas, Adv.

Judgement :

ORDER

A.K. Rajan, J.

1. The petitioner is the same in both the petitions.

2. Criminal O.P. No. 3608 of 2004 is with respect to Crime No. 77 of 2003, on the file of the Inspector of Police, Koodankulam Police Station. According to the

prosecution, the petitioner poured acid on Jeenakumari and her friend Lawra on 31-3-2003 at about 8.30 a.m. when they entered into Raja Pharmacy College at Tirunelveli. Since Jeenakumari belongs to Scheduled Caste community, complaint has been registered under Sections 328, 352, 506(1), IPC and 3(1)(x) and 3(1)(xii) SC and ST (Prevention of Atrocities), Act.

3. CrI. O.P. Nos. 3623 of 2004 is with respect to Crime No. 43 of 2003 on the file of Thuckalay Police Station. According to the prosecution, the petitioner threw bleaching powder on the face of Jeenakumari on 14-1-2003. Therefore, a complaint has been registered under Sections 328, 352 and 506(1), IPC and 3(1)(x) and 3(1)(xi) SC and ST (Prevention of Atrocities) Act.

4. The petitioner surrendered in both the cases on 5-6-2003. From that day onwards, he is in jail. Later on, he was also detained under Act 14 of 1982. But, the detention order was set aside by this Court. Therefore, the present petitions have been filed for release of the petitioner on bail.

5. Mr. Srinivas, learned counsel for the petitioner, submits that the prosecution has not come forward with full facts and most of them have been hidden. The FIR in both the cases does not contain full particulars. The learned counsel further submits that the injured persons were not referred to Government Hospital on any date. The wound Certificates relied upon by the prosecution are Certificate issued by a private doctor by name Dr. T. Thiraviam, he is an Orthopaedic Surgeon. The doctor, who treated the victims, has not even stated before the Investigating Officer as to the nature of treatment given by him to the victim girls. If really acid was poured on the face of Jeenakumari, then the treatment given to her should be filed as an evidence and the case sheet should have been seized by the prosecution. There is no statement recorded from Dr. Thiraviam. In the intimation sent by the doctor to the police -- with respect of injured Lawra, a friend of Jeenakumari, it is stated as 'assault injury'. The information sent to the police does not contain that the victims sustained injuries due to pouring of acid. Therefore, the entire case of the prosecution is not supported by the materials available on record. Therefore, the petitioner is entitled for bail.

6. The learned Government Advocate (Criminal side) submits that the assailant has been identified by independent witnesses, one of them is a lecturer of the College, and the other is a student, who also travelled along with Jeenakumari in the bus and alighted from the bus and entered into the College at the time of the incident. All the witnesses identified the assailant. Apart from that, the watchman has also identified the petitioner as the assailant. Therefore, there is no doubt as to the identification of the accused. Moreover, the doctor has also given a Certificate stating that the injured have suffered due to acid attack. Hence, there is a prima facie case against the petitioner. Considering the fact that the petitioner has poured acid on the face of the victims, he is not entitled for bail.

7. The learned Government Advocate (Crl. side) has produced the case diary of this case.

8. On perusal of the case diary, it is seen that the occurrence with respect to acid attack is alleged to have taken place at 8.30 a.m. on 31-3-2003. Immediately, they were taken to the private hospital run by Dr. Thiraviam, who after treating them, sent an intimation to the police. In that intimation it is stated that Lawra was said to have been 'assaulted', whereas Jeenakumari is said to have sustained 'assault injury'. This intimation was despatched at 9.35 hrs. The FIR has been registered at 9.35 hrs. on the same day. There is no reference to any 'acid attack' or that 'acid' being thrown on the face of the victims. The police registered a case and went to the scene of occurrence, prepared an observation mahazar and a sketch at about 4.00 p.m. on 31-3-2003.

9. It is seen from the mahazar that a white plastic container was found at the place of occurrence and it said to have contained 'one drop of acid'. But, the plastic container has been sent to the Court, as seen from the case diary, only on 13-4-2003. It is known why for 13 days the plastic container was not sent to the Court.

10. Nothing except the plastic container was recovered from the place of occurrence, the acid stained mud has not been recovered, if acid is thrown, it is likely that it spilled over on the earth. Neither the clothes of the victim were seized; when acid is thrown on a person, the clothes are bound to contain acid. But, strangely the clothes of the victims were not seized -- either from Jeenakumari or

from Lawra. It is also seen from the case diary that a request has been given to the Court to send the plastic container for chemical examination to find out the kind of the acid. But the case diary does not contain the result of the chemical report. Therefore, it is now known as to what kind of 'acid' that was poured on the victims. Dr. Thiraviam, who has treated the victims, has stated when examined by police that he treated both the victims in his hospital and they were admittedly on receipt of the police intimation, they have not taken any steps to send the victims to the Government hospital. No Government doctor has ever examined either of these victims. The Police Officer is duty bound to send the victims to any of the Government hospitals, who alone can certify with respect to the injuries sustained by them. Strangely, the Investigating Officer has not sent any of the victims to the Government doctor on any date. Till today, they have not been referred to any of the Government hospitals. Therefore, no Government doctor has given any opinion on the injuries sustained by the victims till this date.

11. The wound certificate -- with respect to Jeenakumari -- has been obtained only from Dr. Thiraviam. It read as follows :

'INJURIES1. Acid thrown over the face.

2. Acid thrown over the right hand forearm.

Skin involvement seen in

(a) Both sides of forehead.

b) Both eyelids

c) Nose

d) Medial 1/2 of cheek both sides.

e) Upper lip

f) Chin.

Patient is discharged on 'April 14, 2003. Injury Nos. 1 and 2 are grievous.'

The wound certificate of Lawra is as follows:--

'INJURIES :

1. Radial border of right forearm both dorsal and volar aspect.
2. Left index -- dorsum of Ppx.

Patient is discharged on March 31, 2003.

All injuries are simple.'

Dr. Thiraviam when examined by the police has not stated any particulars about the treatment given by Dr. Thiraviam to the two injured persons, who were admitted in his hospital from 31-3-2003 till 14-4-2003. The case sheet of these two patients are also not found in the case diary. In such cases, the case sheet should have been seized or it should be recorded from the doctor as to the treatment given to these persons. In these circumstances, there is, absolutely, no evidence as to the kind and nature of acid that was thrown. There is no chemical report at all to arrive at a conclusion that acid was poured on the complainant. The 'one drop of acid' that was found in the container should have been tested to find out the kind of the acid it contained, before it was emptied. It is not impossible to find out the kind, the nature and the strength of the acid from the container. When that be the case, there is, absolutely, no evidence as to what is the kind and nature of acid that was kept in the plastic container before it was thrown on the victim girls.

12. Further, as stated already, acid stained earth or clothes of the victims were not seized and sent for chemical analysis. If really acid was thrown on the victims, the clothes worn by the victims would definitely contain the acid. By testing the clothes, the nature of acid that was poured on the victims can easily be found out. Similarly, from the affected skin of the victims also the nature of acid could be detected. But the Investigating Officer has not done any these things. Further, Dr. Thiraviam has not mentioned anything except 'assault' and 'assault injury' in the police intimation sent by him. The fact that it says only 'assault', 'assault injury' would go long way to show that it was not reported to him by the victims that they were assaulted with acid. All these give rise to a reasonable doubt, at this stage,

on the veracity of the prosecution case.

13. That apart the petitioner had produced the copies of some of the letters written by Jeenakumari to the petitioner/accused; which Jeenakumari also admits in the enquiry that she wrote those letters to the petitioner/accused. A perusal of the letters go to show that she was bent upon taking revenge on the petitioner, she has stated that '99% she lives only to take revenge on him.' These letters also reveals that there were some relationship between the petitioner and Jeenakumari. It appears that due to misunderstanding that developed between them they decided to fell out.

14. Be that as it may, presently the Court is concerned only with grant of bail to the accused/petitioner. In view of the above said facts, the petitioner made out a case for bail. When the origin of the case is shrouded in mystery; that is when it is a mystery whether the victim Jeenakumari has suffered acid attack at the hands of the petitioner, the petitioner is undoubtedly entitled for bail. It appears that from beginning there is some-thing fundamentally wrong in this case. It is for the authorities concerned to look into those aspects also.

15. In this case it is also seen that a case has been registered under Section 3(1)(x) and (xii) of SC and ST (Prevention of Atrocities) Act also. Section 3(1)(xii) relates to a very severe atrocity committed against a member of Scheduled Caste and Scheduled Tribe, which is as follows :

Punishments for offences of atrocities. --(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed.'

None of the acts alleged to have been committed by the petitioner (as found in the FIR as well from the statement recorded during investigation), attracts that offence, It is difficult to understand how such a serious charge has been made against the petitioner.

16. This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.

17. In the result, the petitioner is directed to be released on bail on condition that he executes a bond for a sum Rs. 5,000/- (Rupees Five thousand only) with two sureties each for a like sum to the satisfaction of the Judicial Magistrate, Padmanabapuram, Kanyakumari district in respect of Crime No. 77 of 2003 on the file of Koodankulam Police Station.

18. The petitioner is also directed to be released on his executing a bond for a sum of Rs. 5,000/- (Rupees Five thousand only) with two sureties each for a like sum to the satisfaction of the judicial Magistrate, Velliyoor, Tirunelveli district, in respect of Crime No. 43 of 2003 on the file of Thuckalay Police Station. The petitioner shall appear before the Magistrates concerned, as and when required by the Magistrates.