

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.255 of 2009
and
M.P.No.2 of 2009

Thiagu @ Thiyagarajan ... Appellant

Vs

State rep. By
The Inspector of Police,
Ammamet Police Station,
Crime No.1620 of 2006,
Salem City. ... Respondent

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C.,
against the conviction and sentence imposed on the appellant in
S.C.No.255 of 2007 dated 16.04.2009 on the file of the Sessions
(Mahila) Court, Salem.

BAIL SHIP

The Appellant/Accused namely Thiagu @ Thiyagarajan,
S/O.Ramar, was directed to be selected on bail as per the order
of this court dated 18.06.2009 in Cr1 M.P.1 of 2009 in
Cr1.A.No.255 of 2009 on the file of this court.

For Appellant : Mr.John Sathyan

For Respondent : Mr.Mohamed Riyaz,
Gov. Adv. (Cr1. Side)

JUDGEMENT

The sole accused in S.C.No.255 of 2007 on the file of
the Mahila Court, Salem, is the appellant herein. He stood
charged for an offence under Section 3 r/w. 4 and 4-B of Tamil
Nadu Prohibition of Harassment of Woman Act 1998. By Judgment

dated 16.04.2009, the trial court convicted the accused under Section 3 r/w. 4 of Tamil Nadu Prohibition of Harassment of Woman Act 1998 and sentenced him to undergo rigorous imprisonment for 3 years and imposed a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 3 months and convicted him under Section 4-B of Tamil Nadu Prohibition of Harassment of Woman Act 1998 and sentenced him to undergo rigorous imprisonment for 10 years and imposed a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for 6 months. The trial Court ordered the above sentences to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, one Thilagavathi, is the daughter of P.Ws.1 and 2. While the deceased was studying 9th standard, the accused used to tease her regularly. On 22.08.2006, at about 12.30 p.m., while the deceased was returning from the school, the accused came there and deceived her that her mother met with an accident and kidnapped the deceased in an auto, on hearing the news, P.W.1, brother of the deceased and others chased him and got the accused and the deceased and brought the accused to the police station, where the police warned the accused. Then, P.W.1, stopped the deceased sending her school. Thereafter, on 05.09.2006, while the deceased was sitting in front of her house, the accused came there and threatened her to come along with him. On seeing the same, P.W.1, the mother of the deceased scolded the accused. At that time, fearing that the accused will kidnap her, the deceased went inside the house and poured kerosene and set fire on herself and thereafter, she was taken to the Government Hospital, Salem, where she was admitted.

3. On receipt of the memo from the hospital, P.W.6, Sub-Inspector of Police, attached to the respondent police, went to the hospital and recorded the statement of the deceased, Ex.P.5 and based on the same, he registered a case in Crime No.1620/2006, for an offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act 1998, and sent the First Information Report, Ex.P.6 and copy of the same to the higher officials.

4. P.W.9, Inspector of Police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2 and drew a Rough Sketch, Ex.P.8 in the presence of the witnesses and he recovered a white plastic can containing kerosene(M.O.1)

and then he recorded the statements of the other witnesses. On 06.09.2006, near Ammapettai Kumaragiri Downhill Path, he arrested the accused. On 06.09.2006, at 7.45 p.m., the deceased succumbed to burn injuries and after receipt of the death memo of the deceased, he altered the case into Section 4-B of Tamil Nadu Prohibition and Women Harassment Act. Then, he sent a requisition for postmortem/autopsy on the dead body of the deceased. P.W.7, Doctor, working in the Government Medical College Hospital, Salem, conducted postmortem/autopsy, on the dead body of the deceased and has given a opinion that the deceased died of burn injuries and he has given postmortem report, Ex.P.7. Then, P.W.10, recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses and after completion of investigation, he laid charge sheet against the accused under Sections 3, 4 and 4-B of Tamil Nadu Prohibition of Harassment of Woman Act 1998.

5. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 9 witnesses were examined and 11 documents were exhibited, besides one material object was marked.

6. Out of the witness examined, P.W.1 is the mother of the deceased. She has spoken about the earlier harassment of the accused on the deceased and also spoken about the kidnapping of deceased by the accused. According to her, on the date of occurrence, while the deceased was standing outside of the house, the accused came there and threatened her to come along with him and out of fear, the deceased went inside the house and poured kerosene and set fire on her, and they took her to the hospital, where the Judicial Magistrate recorded the statement of the deceased. P.W.2 is the father of the accused. He has also spoken about the earlier occurrence of kidnapping and he also deposed that the Judicial Magistrate recorded the statement of the deceased.

7. P.W.3, is only a hearsay witness and he has also spoken about the earlier occurrence. P.W.4 is a witness to the Observation Mahazar and also recovery of Plastic Can, M.O.1. P.W.5 is the brother of P.W.2. He also spoke about the earlier occurrence, where the accused kidnapped the deceased. P.W.6, Sub-Inspector of Police, has spoken about the registration of the case. P.W.7, Doctor, conducted postmortem on the dead body of the deceased and gave a postmortem report Ex.P.7. P.W.8 is a relative of P.W.2. He turned hostile. P.W.9, Inspector of

Police, has spoken about the investigation done, recording of statements of the witnesses and filing of charge sheet against the accused.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. One Mrs. Selvakumari, Head Master of the school, where the deceased studied, was examined as D.W.1 and marked a Final report filed against the accused for an offence under Section 75 (1)(c) of the Tamil Nadu City Police Act as Ex.D1, showing that on the very same day of the first occurrence said to have taken place, he was arrested by the police and remanded to Judicial Custody and also marked the attendance register of the school, in which the deceased was studying to show that the deceased was absent on the date of first incident.

9. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

10. We have heard Mr. R. John Sathyan, learned counsel appearing for the appellant and Mr. Mohamed Riyaz, learned Gov. Adv. (Crl. Side) appearing for the State and we have also perused the records carefully.

11. Mr. R. John Sathyan, learned counsel appearing for the appellant submits that the prosecution has suppressed all the material facts. It is the consistent evidence of P.Ws.1 and 2 that while the deceased was admitted in the hospital, the Judicial Magistrate came to the hospital and recorded the dying declaration of the deceased. P.W.9, Investigating Officer, also in his cross-examination has admitted that while examining the witnesses, all the witnesses have stated that the Judicial Magistrate has recorded the statement of the deceased. But, the prosecution did not examine the Judicial Magistrate and the Judicial Dying Declaration was also not marked, and the prosecution has totally suppressed the real fact and came out with false allegation against the petitioner. Apart from that, P.W.8, who conducted mediation has turned hostile and he has not corroborated the evidence of P.Ws.1 and 2. For the alleged earlier occurrence, where the accused was said to have kidnapped the deceased, except the evidence of P.Ws.1 and 2, no other independent witness corroborating their evidence, and the one and only independent witness, namely, P.W.8, also turned hostile. In the above circumstances, the prosecution failed to prove the charge as against the petitioner and prayed for allowing the appeal.

12. Mr. Mohamed Riyaz, Government Advocate (Criminal Side), appearing for the respondent submits that P.Ws.1 and 2

have categorically spoken about harassment of the accused to the deceased and apart from that other two witnesses, namely P.Ws.4 and 5 have also spoken about the earlier occurrence and the prosecution has clearly established that it is only this accused, who had harassed the deceased and due to the same, she committed suicide. Hence, the prosecution has proved the charges beyond all reasonable doubt and sought for dismissal of the appeal.

13. I have considered the rival submissions and perused the records carefully.

14. The case of the prosecution was that after the occurrence, the deceased was taken to the Government Medical College Hospital, Salem and she was admitted there with burn injuries. Subsequently, on intimation given by the hospital, P.W.6, Sub-Inspector of Police, went to the hospital and recorded the statement of the deceased and based on the same, he registered the complaint. But the prosecution did not examine the Doctor, who admitted the deceased in the hospital and the prosecution also did not mark the accident register to show that whether the deceased was conscious at the time of admission in the hospital and what was the earliest statement of the deceased. As per the evidence of P.Ws.1 and 2, a Judicial Magistrate gone to the hospital, and she recorded the statement of the deceased, P.Ws.1 and 2 in their cross-examination also have confirmed that the Judicial Magistrate has recorded the statement of the deceased. P.W.9, investigating officer, also admitted that all the witnesses have stated in their 161 Cr.P.C statement that the Judicial Magistrate recorded the statement of the deceased in the hospital. But, the dying declaration recorded by the Judicial Magistrate, was not marked as evidence before the Court, and the Judicial Magistrate was also not examined by the prosecution.

15. In the above circumstances, non examination of the Doctor, who admitted the deceased in the hospital and also the Judicial Magistrate, who said to have recorded the statement of the deceased in the hospital, is fatal to the case of the prosecution. Apart from that, except the evidence of P.Ws.1 and 2, who are interested witnesses, there is no evidence available on record to corroborate their evidence. Eventhough the accused was taken to the police station, where he was warned and sent back, there is no evidence available to prove the same. But on the other hand the accused has marked Ex.D1, a final report filed by the police against him, to show that on the date of occurrence he was arrested under City Police Act and remanded to judicial custody. Regarding the harassment meted out by the deceased is concerned, P.W.2 has deposed that he came to know about the occurrence from P.W.8. But, P.W.8 has turned hostile and he did not corroborate the evidence of P.W.2.

16. In the above circumstances, except the interested evidences of P.Ws.1 and 2, there is no other evidence available to show that the accused has harassed the deceased. Hence, I am of the considered view that the prosecution has miserably failed to prove the charge as against the accused beyond any reasonable doubt, therefore, the appellant/accused is entitled for acquittal.

17. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused in S.C.No.255 of 2007 on the file of the Mahila Sessions Court, Salem dated 16.04.2009 are set-aside and the appellant is acquitted from the charges leveled against him. Fine amount, if any, paid him shall be refunded to him. Bail bond, if any, executed shall stands cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VI)

/TRUE COPY/

Sub Assistant Registrar

mrp

To

1. THE SESSIONS JUDGE,
MAHILA COURT, SALEM.
2. THE JUDICIAL MAGISTRAT NO.V, SALEM.
3. THE CHIEF JUDICIAL MAGISTRATE, SALEM.
4. THE INSPECTOR OF POLICE, AMMAPET POLICE STATION,
SALEM CITY.
5. THE SUPERINTENDENT, CENTRAL PRISON, SALEM.
6. THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

+1 C.C. to Mr.John Sathyan Advocate SR.No. 4820

Cr1.A.No.255 of 2009

NRI (CO)

T.R (15/11/2017)