

BAIL SLIP

The Petitioner/Accused viz, Palanisamy, S/o.Govindaswamy was directed to be released on Bail as per Order of this Court, dated 20.04.2015 and made in CrI.Mp.No. 1 of 2015 in CrI.RC.287/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on: 29..06..2017

Order Pronounced on: 25..10..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.287 of 2015

Palanichamy

... Petitioner

-Versus-

1.State Rep. By

Deputy Superintendent of Police,
OCU-I, CBCID, Chennai.
[Crime No.363 of 2008]

2.Miss.K.Durga Devi *

[*Impleaded as per the Order of this court
dated 07.09.2015 made in M.P.No.4 of 2015]

... Respondents

Revision Case filed under Sections 397 r/w 401 of Cr.P.C. to call for the entire records relating to the case in C.A.No.No.4 of 2013 on the file of the learned I Additional Sessions Judge, Thiruvallur and to set aside the judgement dated 30.03.2015 made in CrI.A.No.4 of 2013 by the learned I Additional Sessions Judge, confirming the conviction and sentence imposed on the petitioner by judgement dated 11.12.2012 in C.C.No.123 of 2009 by the learned Judicial Magistrate No.I, Thiruvallur.

For Petitioner

: Mr.Sunder Mohan

For Respondents

: Mr.R.Ravichandran,
Government Advocate
(Criminal Side) for R1
Mr.C.A.Theagarajan for R2

ORDER

The petitioner is the sole accused in C.C.No.123 of 2009 on the file of the learned Judicial Magistrate-I, Thiruvallur. He stood charged for offences under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act, and Section 354 of IPC. He denied the charges and therefore, he was put on trial. By judgement dated 11.12.2012, the trial court convicted him under both the charges and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/- for offence under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act. Even though the trial court found him guilty under Section 354 of IPC also, it had not chosen to inflict separate sentence thereunder. Challenging the conviction and sentence, the petitioner filed an appeal in CrI.A.No.4 of 2013, before the learned I Additional Sessions Judge, Thiruvallur. The learned appellate judge, in turn, by judgement dated 30.03.2015, dismissed the appeal thereby confirming the judgement of conviction and sentence passed by the learned trial judge. Now, challenging the affirmation of conviction and the sentence by the appellate court, the petitioner is before this court with the present criminal revision.

2. The case of the prosecution in brief is as follows:- P.W.2 is the victim in this case. She was a minor at the time of the alleged occurrence and was studying IX Standard in a local school. P.W.1 is her mother and P.W.4 is her father. The accused was working in that school as a Physics Teacher. The school, in which, the victim was studying used to organize science exhibition every year. For the year 2007, the science exhibition was conducted in that school on 11.08.2006. The exhibition was conducted on the first floor and the physics laboratory was located at second floor of the school building.

3. It is the case of the prosecution that after the exhibition was over, the victim was asked to clean the garbage left in that the area. Therefore, she went to the physics lab in search of a broom stick where the accused alone was present. When she asked the accused as to where broom stick was kept, accused directed her to take it from loft and he asked her to use a stool which was kept nearby. She, accordingly, took out the broom stick by climbing on the stool. When she was standing on the stool, she had sensed that some body hugged her from her behind. She immediately jumped from the stool. When she turned her back, she saw the accused standing behind her and she requested him to leave her.

4. It is the further case of the prosecution that not minding the request of the victim, the accused molested her by

pressing her breasts with his hands and he touched her cheeks and lips with his hands. Despite her protest, the accused kissed on her lips. He thereafter wrapped her bottom dress and touched her private part. The victim had managed to escape from the scene of occurrence and she immediately informed about the incident to her friend P.W.5.

5. It is the further case of the prosecution that, thereafter she again went to the physic lab to put back the broom stick. This time, her friend P.W.5 accompanied her, but, she was waiting out side the lab to watch out the happenings. When the victim entered into the lab, again, the accused hugged her, and the victim raised alarm for help and on haring the same, P.W.5 entered into the lab. On seeing her, the accused released the victim. When the victim and her friend were about to come out from lab, the accused called them and warned them not to disclose the incident to anyone, and he also threatened to fail them, if they disclosed the same to anybody. Therefore, P.W.2 did not inform about the incident to her parents, however, unable to bear the same, she did not go to school for two days.

6. P.W.3 was as a Librarian in the school. After a week's time, P.W.2 informed about the incident to P.W.3. P.W.3, in turn, advised P.W.2 to approach a former teacher (P.W.10) and also gave her telephone number. Two days thereafter, P.W.10 visited the house of P.W.2 and P.W.2 later informed about the incident to the School Head Master and also to the trustees. They did not take any action and instead they advised P.W.2 not to disclose the incident to anyone.

7. P.W.1, the mother of P.W.2, thereafter, on the advise of P.W.10, approached the District Collector with a complaint along with P.W.10 and P.W.3. The District Collector, in turn, ordered for an inquiry. P.W.20 who was the Chief Educational Officer, conducted inquiry and filed a report stating that no such occurrence was taken place. According to the petitioner, since the repeated complaints to school authorities and the District Administrative authority did not evoke any response, P.W.1, thereafter, filed a private complaint (Ex.P.1) on 14.07.2008 against six persons before the learned Judicial Magistrate-I, Thiruvallur and on receipt of the complaint, the learned Judicial Magistrate issued a direction to Vengal Police Station for registering the complaint. On the directions of the learned Judicial Magistrate, P.W.17, the Inspector of Police, Vengal Police Station, registered a case, in Crime No.363 of 2008, on 01.09.2008 under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act.

8. P.W.17 took up the case for investigation. He visited the

place of occurrence. He examined P.W.2 and few other witnesses and after investigation closed the case as 'mistake of fact'. Thereafter, based on the orders passed this Court, the case was transferred to 1st respondent CBCID for investigation. P.W.24, the then Superintendent of Police, CBCID, OC-I, Chennai took up the case for investigation. He examined P.Ws.1 to P.W.23 and after completion of investigation, she laid a final report against the petitioner.

9. Based on the above materials, the trial court framed charges under Section 4 of The Tamil Nadu Prohibition of Harassment of Women Act and Section 354 of IPC. The accused denied the charges. Therefore, the trial Court went ahead with the trial. During the trial, on the side of the prosecution as many as 23 witnesses were examined as P.Ws.1 to P.W.24, 63 documents were marked as Exs.P.1 to P.63 and a material object was marked as M.O.1-photographs (6 series).

10. When the incriminating materials that appeared in the evidences of the prosecution witnesses were put to the accused under Section 313 Cr.P.C. he denied the same as false. The accused examined one Mr.Sarathy as D.W.1 and one Ms.Nirmala as D.W.2 on his side. D.W.1 had stated that P.W.1 requested him over phone to depose him against the school management. D.W.2 who was the Assistant Headmistress in the school had stated that P.W.11 used to come to the school in an inebriated condition and act against the interests of the institution.

11. Having considered all the above materials, the trial Court found the accused guilty under both the charges and accordingly, punished him as narrated in the first paragraph of this order and the appeal filed by the petitioner was also dismissed. That is how, the petitioner is before this Court with this revision.

12. I have heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the 1st respondent/complainant and the learned counsel appearing for the 2nd respondent/victim, and also perused the records carefully.

13. The learned counsel for the petitioner would submit that there was enormous delay of more than 700 days in filing the private complaint before the jurisdictional Magistrate and there is no plausible explanation offered neither by P.W.1 nor by the prosecution for such enormous delay. Further, after registration of the case based on the court's direction, P.W.17, who took up investigation, examined P.W.2 and few other witnesses and closed the matter as "mistake of fact". The learned counsel would draw the attention of this court to the evidence of P.W.17 in this regard.

14. The learned counsel for the petitioner would further submit that thereafter the case was reopened and investigated by P.W.24 as per the orders of this court. There are lot of contradictions and inconsistencies in the evidences of P.W.2 and P.W.5. In the complaint, there has been a reference with regard to another accused who was also said to have sexually abused the girl students in the school. But, the CBICID prosecuted the petitioner only. When this was confronted to P.W.1, during her cross examination, she was not able to offer any explanation. The learned counsel for the petitioner further submitted that even according to P.W.2, one Narayana Murthy, yet another teacher, only asked her, during post lunch, to go and bring a broom stick from the physics lab to clean the garbage at the exhibition venue. But, the said person had not been examined as a prosecution witness. Further, according to the learned counsel, P.W.10, who had been working in the school was sent out of service and only at her instigation, the present case has been filed with all sorts of false allegations in order to bring disrepute to the school where the accused was employed as teacher. P.W.10, however, in her cross examination clearly admitted that she came to know about the occurrence through P.W.3.

15. The learned counsel further added that P.W.11 was in inimical terms with the school management, in which, P.W.11's uncle was one of the donors to the school and having not satisfied with the activities of the management, he stopped donating to the school trust. In that circumstance only at the instigation of P.W.11, the present private complaint had been filed in court after enormous delay. Therefore, his evidence also cannot be believed.

16. Per contra, the learned Government Advocate (Criminal Side) appearing for the State would submit that P.W.2 is the victim in this case. She has clearly narrated the entire occurrence and there is no reason to disbelieve her evidence. According to him, in a case of this nature, the victim family remains worried about the future of the victim. The victim remains in traumatic state of mind. The family of the victim generally shows reluctance to go to the police station because of the attitude of the society towards such a victim girl. In the instant case, after the occurrence, the mother of the victim approached District Administrative Authority on the advice of a Non-Governmental Organization, but, the same evoked no response and, therefore, she approached the court with a private complaint. Since the complaint was closed by the jurisdictional police, the mother of the victim approached this court for investigation by some other investigating agency and upon the directions of this court, the case was taken up for

investigation by CB CID. After investigation, CB CID laid charge sheet against the petitioner. Hence, the delay attributed on the part of the victim has been explained. The learned Additional Public Prosecutor contended in support of his contention, relied on the judgement of the Hon'ble Supreme Court in Sahebrao v. State of Maharashtra (2006) 9 SCC 794 and Satish Shetty v. State of Karnataka, (2016) 12 SCC 759.

17. In so far as the occurrence is concerned, the learned Government Advocate (Criminal Side) would submit that the evidence of P.W.2 is corroborated by P.W.5 and the other independent witnesses and minor contradictions in their evidences cannot be taken into account in a case of this nature. In support of his contention, he relied on the judgement of the Hon'ble Supreme Court State of Punjab v. Gurmit Singh, (1996) 2 SCC 384.

18. The learned counsel appearing for the 2nd respondent submitted that the courts below having considered the entire evidence in a proper perspective convicted the accused and absolutely there is no infirmity in the judgement of the courts below. The delay has also been properly explained by the prosecution and the victim hailing from a rural and backward community would have had initial hesitation to inform the occurrence to the police. Mere delay in filing the complaint would not automatically render the prosecution case doubtful. In case of sexual harassment, there would have been initial hesitation in the mind of the victim party which may affect her family reputation. Hence the delay in filing the complaint would not create any doubt in the case of the prosecution.

19. The learned counsel for the 2nd respondent in support of his above contention relied on the following judgements in Ramdas v. State of Maharashtra, 2007(2) SCC 170; Dildar Singh v. State of Punjab, AIR 2006 SCC 3084; Bodhisattwa Gautam v. Subhra Chakraborty, AIR 1996 SC 922; Amar Singh v. Balwinder Singh, 2003 (2) SCC 518, Wahid Khan v. State of Madhya Pradesh, 2010(2) SCC 9, Ravinder Kumar v. State of Punjab, 2001 (7) SCC 690; and State of Himachal Pradesh v. Gian Chand, 2001 (6) SCC 71. All the above judgements relate to delay in filing the FIR in a crime against woman wherein it has been held that the delay is not always fatal to the prosecution case.

20. I have considered the rival submissions carefully.

21. The alleged occurrence took place on 11.08.2006. There were allegedly two instances of molestation committed by the accused upon P.W.2 at the physics laboratory in the school on the date of occurrence. The first one was at the time when P.W.2 gone to the laboratory to take a broomstick to clear the

exhibition venue and the other one was when P.W.2 was about to restore back the broomstick at physic laboratory. P.W.5, who was alleged to have witnessed the latter instance, narrated the alleged second instance of molestation committed by the accused upon P.W.2.

22. Earlier a private complaint was filed before the learned jurisdictional Magistrate on 14.07.2008 as against six persons including the petitioner. That was forwarded by the learned Magistrate to the jurisdictional police for registration of FIR under Section 156(3) of Cr.P.C. On such direction, P.W.17 registered a FIR and investigated the matter and after investigation, he closed the case as "mistake of fact". Thereafter, the case was investigated by the CB CID police based on the directions of this court and a final report came to be filed only against this petitioner. In the complaint it is alleged that the petitioner and one Kingston @ Arokiyasamy, molested P.W.2, while she was alone in the physics laboratory. When P.W.2 and P.W.5 brought it to the notice of P.W.3, who was then working as Librarian in the school, about the instances of molestation, she asked them to approach P.W.10, a former teacher of the school. From the evidences of P.W.1, 2 and 5 it could be seen that after a few days of the occurrence, they approached, P.W.10 and then P.W.11, and P.W.1 was advised by them to approach a Non Governmental Organisation in this regard. Thereafter, the private complaint came to be filed. The conviction of the accused is mainly challenged on the ground that there was enormous delay in filing the complaint.

23. Admittedly, the delay in this case was more than 22 months. . Ordinarily delay in filing of First Information Report (FIR) would be looked in favour of the accused, but, the consideration is different in a case of involving sexual offences as held in Satpal Singh v. State of Haryana, (2010) 8 SCC 714 wherein the Hon'ble Supreme Court has held that the delay in lodging FIR in sexual offences has to be considered with a different yardstick.

24. In Bhika Ram v. State of Rajasthan, 2001 Cri.L.J. 2123, the Hon'ble Supreme Court has held as follows:-

8. That no doubt delay in lodging the FIR in sexual assault cannot normally damage the version of the prosecutrix, as held by the Hon'ble Supreme Court in various judgements, but, where there is inordinate delay in registration of the FIR, in such circumstances, it casts a cloud of suspicion on the credibility of the entire wrap and woof of the prosecution story and in this case, this has happened and thus, the whole case of the prosecution is under the cloud of

suspicion and doubt.

9. That the so-called delay of one and half months is fatal to the prosecution case and the whole prosecution case can be thrown out on this ground alone."

25. In the light of the above legal position, let me now consider the evidences available on record so as to find out whether the delay in lodging the complaint about the crime by way of private complaint creates doubt on the credibility of the prosecution witnesses.

26. It is pertinent to note that in the instant case the law was set on motion by P.W.1 by filing a private complaint (Ex.P.1) before the jurisdictional Magistrate under Section 200 of Cr.P.C. The learned Magistrate did not take cognizance of the offences alleged in the complaint on presentation of the same and the complaint was referred by the learned Magistrate under Section 156(3) of Cr.P.C. for investigation and report. In the above complaint, the allegation was made not only against the petitioner but also against one Kingston @ Arockiyasamy. Earlier, P.W.17 who recorded the statements of witnesses, after investigation closed the case as "mistake of fact". While so, on the directions of this court, the CB CID, took up the investigation and laid final report. But, the other accused named in the private complaint was not prosecuted by the CB CID. Apart from that, there were four other accused also shown in the complaint and the allegation against them was that they did not take any action against the teacher who misbehaved with the girl students. But, neither P.W.2 nor P.W.5 would state any thing about the other accused who allegedly misbehaved sexually with P.W.2 as stated in the complaint Ex.P.1. When P.W.1 was confronted with the complaint she had stated that she has stated only what P.W.2 told her. P.W.1 is an illiterate lady. She does not know even to write Tamil. She had stated that only on the advise given by P.W.10, she had approached P.W.18, the General Secretary of a Non Government Organisation. P.W.1 though in her cross examinations stated that she had given complaint to the police immediately, there was no action on the same and hence she was forced to approach the District Collector and NGOs to ventilate her grievance against the teachers who misbehaved with P.W.2 and the school authorities refused to take action against those teachers. But, there is no evidence to show that there was any such complaint filed immediately after the occurrence. The private complainant upon which FIR came to be registered on the directions of the learned Magistrate was investigated by P.W.17. P.W.17 in his evidence has stated that during his investigation, except P.W.2, none has stated anything about the alleged sexual harassment made by the accused on

P.W.2. According to him, P.W.2 has only stated that the petitioner pulled her hands on the date when exhibition was conducted in the school. P.W.5 is non other than a close relative of P.W.1. As rightly pointed out by the learned counsel for the petitioner it is not as if P.W.1 and P.W.2 deferred the matter, but, they had approached various authorities one after the other including a NGO seeking aid in this matter. P.W.11, who is a relative of one Sreenivasa Rajagopal, who was one of the donors of the school trust, was in inimical terms with the school management, particularly with the trustees. According to the learned counsel for the petitioner, after December 2004, there was no cordial relationship between the relative of P.W.11 and the school trust and a criminal case was also instituted against him by the school Trust. P.W.11 only brought pressure upon P.W.1 to prosecute against the petitioner and other persons in the school management committee. Apart from that, P.W.1 also admitted in her cross examination that the entire legal expenses were met out by P.W.11-Rajesh. This would also clearly reveal the active involvement of P.W.11 against the school management.

27. P.W.10 was working in the school during 1995-1996 and she was later on sent out of the school. Only at her instigation, the complaint was given before the NGO. P.W.10 has stated in her cross examination that he had no knowledge about the occurrence. P.W.23, the husband of P.W.10, who happened to be an Advocate and before whom the complaint was originally said to have been given, turned hostile.

28. It is also pertinent to mention that based on the complaint given by the mother of the victim, the District Collector ordered for an inquiry by P.W.20 - the Chief Educational Officer, Thiruvallur. The Chief Education Officer also conducted inquiry and filed her report-Ex.P.41 stating that there was no such occurrence took place in the school. P.W.5 would not have witnessed the occurrence as she has stated nothing about the occurrence before the NGO, namely, Indian Council for Child Welfare and her evidence appears to be highly artificial. P.W.2 also did not say anything about the presence of P.W.5 in her earlier statement. P.W.17, the Inspector of Police in his evidence has clearly stated that his investigation revealed that the complaint has been given falsely at the instigation of P.W.11. Even according to P.W.17, P.W.2, in her earliest statement made to him, has only stated that the accused only pulled her hands. Nothing was brought on record by the prosecution to doubt his evidence. Apart from that, in the complaint, it has been mentioned that 2 teachers misbehaved with P.W.2 and the crime was also registered against 2 persons, yet charge sheet was filed only against the petitioner.

29. It is not as if P.W.1 was reluctant to file a criminal

complaint fearing stigma and further victimisation of her daughter, but, it is seen from the evidence available on record, she had approached P.W.10, a former teacher of the school at the instance of P.W.3. Thereafter, she approached the District Administrative Authority and also NGOs with a complaint against the school teachers alleging sexual harassment against the girl students and finally a private complaint was filed with a delay of more than 22 months . In the above circumstances, in the instant cases, the delay in filing the complaint cannot be lightly viewed. apart from that the complaint also bereft of details of alleged sexual harassment. Even though complaint stated that two persons including the petitioner herein allegedly misbehaved with P.W.2, no evidence let in in respect of the other person. P.W.1, in her cross examination, was unable to answer for the same. All the above circumstances coupled with the enormous delay in filing the complaint would create a doubt in the case of the prosecution.

30. In the light of the above, I am of the considered view that the prosecution has miserably failed to prove the case against the petitioner beyond any reasonable doubt and both the courts below without considering the material available on record in a proper perspective, erroneously convicted the petitioner and hence the conviction and sentence imposed by the court below and confirmed by the appellate court are liable to be set aside and the petitioner is entitled for acquittal.

31. In the result, the criminal revision is allowed. The conviction and sentence imposed on the petitioner by the learned Judicial Magistrate-I, Thiruvallur and as confirmed by the learned I Additional Sessions Judge, Thiruvallur, are hereby set aside and the petitioner is acquitted from both the charges. Fine amount already paid, if any, shall be refund to the petitioner. The bail bond executed by petitioner shall stand cancelled.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The I Additional Sessions Judge,
Thiruvallur.

- 2.The Judicial Magistrate No.I,
Thiruvallur.
- 3.The Deputy Superintendent of Police,
OCU-I, CBCID, Chennai.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Chief Judicial Magistrate,
Thiruvallur.
- 6.The Principal Sessions Judge,
Thiruvallur.

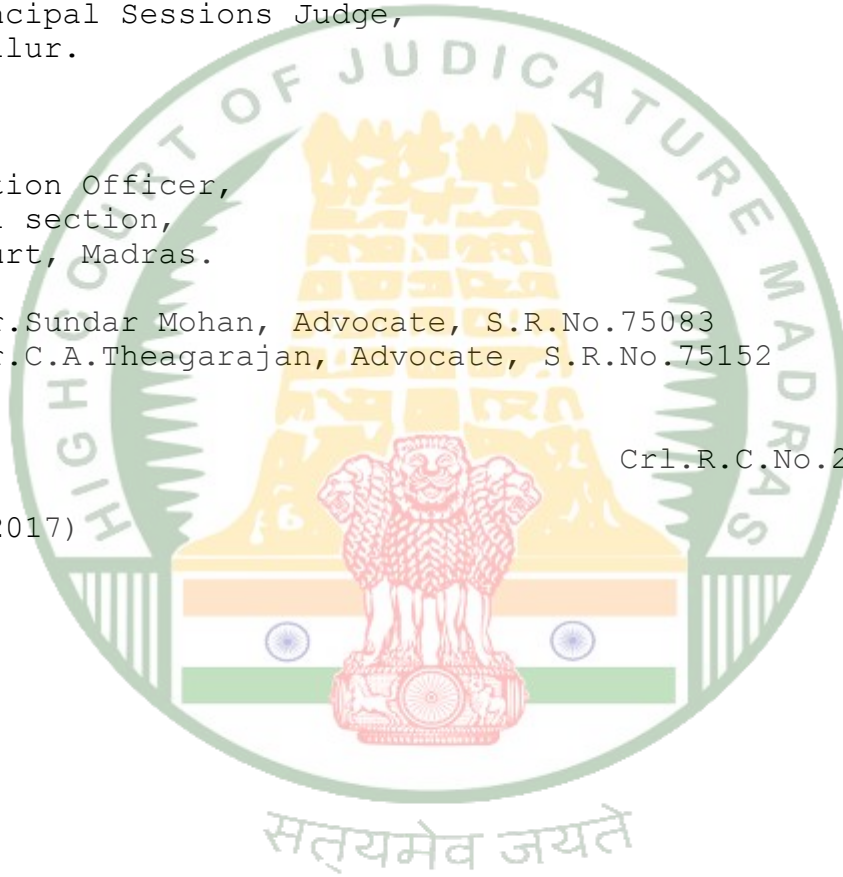
Copy To

The Section Officer,
Criminal section,
High Court, Madras.

+1cc to Mr.Sundar Mohan, Advocate, S.R.No.75083
+1cc to Mr.C.A.Theagarajan, Advocate, S.R.No.75152

Cr1.R.C.No.287 of 2015

GN(07/11/2017)



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