

Bail Slip

That the Appellant/Accused namely Palanisami S/O Sundaraj directed to be released on bail dated 22.6.12 in M.P.No.1/12 in CrI.A.No.343/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.12.2016	Delivered on : 12.01.2017
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CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.343 of 2012

Palanisami

... Appellant/Accused-3

vs.

State By
The Inspector of Police
Padalur Police Station
Perambalur
Crime No.443/2009

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment and sentence dated 31.05.2012 imposed in S.C.No.112 of 2010 on the file of Sessions Judge, Mahila Court, Perambalur.

For appellant : Mr.A.Immanuel

For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

The appellant herein/A-3, who was convicted and sentenced as under, by the Sessions Judge, Mahila Court, Perambalur, in S.C.No.112 of 2010, has come forward with this criminal appeal:-

Conviction	Sentence
(i) U/s.4B of Tamil Nadu Prohibition of Harassment of Woman Act.	(i) 5 years R.I., and to pay a sum of Rs.50,000/- towards fine, i/d. 1 year S.I.
(ii) u/s.354 IPC	(ii) 1 year R.I.
(iii) u/s.294(b)	(iii) one month R.I.

The above sentence was ordered to run concurrently.

2. The case of the prosecution is that the appellant's family as well as complainant's family were residing adjacent to each other and there was dispute between them regarding the land, in between their house. Due to land dispute, there was

enmity towards each other and the complaint lodged by P.W.1 against Sundarraaj/A-1/father of the appellant herein/A-3 and his family members in respect of the land dispute is pending before the Padalur Police Station. While so, on 08.09.2009 at about 6.30 pm., father of this appellant/Sundarraaj, who is the 1st accused, in this case digged the disputed land with spade and he was questioned by the complainant/P.W.1 and his daughters P.W.2 Nagajothi and deceased Praveena.

2.2 According to the prosecution, quarrel arose between both groups and the appellant/3rd accused/Palanisamy abused P.W.2-Nagajothi, by uttering indecent and unparliamentary words and pushed her. When the deceased Praveena questioned the same, the appellant/accused herein, with an intention to outrage her modesty, pulled her blouse and the same was torn. The co-accused who were parents and brothers of this appellant/A-3, also scolded deceased Praveena using obscene words. In such circumstances, apprehending that her modesty will be outraged by the 3rd accused, the deceased Praveena ran away to her house and locked the door and set herself ablaze. On noticing smoke coming out from the house, the complainant and others forcibly broke open the house and found Praveena with burn injuries and found her dead. In such circumstances, the mother of the deceased/P.W.1-Sarala lodged complaint with the respondent-police under Ex.P.1/complaint and the case in Crime No.443/2009 under Sections 147, 294(b), 354, 306 of IPC was registered by Sub Inspector of Police, who deposed as P.W.10. On receipt of the complaint, the Inspector of Police, who deposed as P.W.9 took up the investigation, visited the occurrence spot, prepared Ex.P.2-Observation Mahazar, Ex.P.6-Rough Sketch. After recording the statement of witnesses, conducted inquest. He sent the body of the deceased to Government Hospital, Perambalur, for Post Mortem. Subsequently, P.W.9 arrested the accused 1 to 5 at about 15.30 hours and sent them for remand. After completing the investigation, P.W.9, laid the charge sheet under Sections 147, 294(b), 354, 149 of IPC and Section 4, 4B of Tamil Nadu Prohibition of Harassment of Woman Act, against the accused.

3. The trial court, after hearing the arguments of both sides and upon perusing the relevant documents has framed 1st charge against A-1 to A-5 u/s.147 IPC; 2nd charge against A-3 under Section 294(B) IPC; 3rd charge against A-3 under Section 354 IPC (2 counts); 4th charge against A-1 to A-5 under Section 294(B)IPC, 5th charge against accused 1, 2, 4 and 5 under Section 354 r/w.149 IPC; 6th charge against accused 1 to 5 under Section 306 IPC and 7th charge against accused 1 to 5 under Section 4-B of TN Prohibition of Harassment of Woman Act and the same has been read over and explained to them. The accused have denied the charges and claimed to be tried.

4. On the side of the Prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.7 have been marked.

5. When the accused have been questioned under Section 313 of the code of Criminal Procedure, 1973, in respect of the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

6. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record has found all the accused not guilty under Sections 147, 354 and 306 IPC and Accused 1, 2, 4 and 5 not found guilty under Section 294 (b), 354 r/w.149, 306 IPC and 4 (B) of Tamil Nadu Prohibition of Harassment of Woman Act and acquitted A1, A-2, A-4 and A-5, but A-3 was found guilty of the offence u/s.4B of Tamil Nadu Prohibition of Harassment of Woman Act and u/s.294(b) and 354 IPC and convicted and sentenced as stated above.

7. Aggrieved over the same, the appellant has come forward with this appeal seeking to set aside the finding of the trial court, contending that there was no independent evidence to prove the prosecution case and that the trial court failed to consider the evidence of interested witnesses P.Ws.1 and 2 in proper manner. According to the appellant/accused, there is no material to establish the alleged act of accused and in such circumstances, the conclusion arrived at by the trial court is not just and proper and the same is sought to be set aside.

8. According to the prosecution, on 08.09.2009, at about 6.30 a.m., the 1st accused Sundarraaj digged the disputed land situated in between the house of the complainant and when the complainant/P.W.1-Sarala and her daughters Nagajothi and Praveena questioned the same, they were abused and insulted by A-1-Sundarraaj and his family members, resulting in the occurrence alleged in Ex.P.1-complaint.

9. As stated earlier, the trial court has concluded that the alleged offence under Section 306 is not established against all the 5 accused. The trial court in its judgment, in paragraph No.19, has held as follows:-

" In this case, it is nowhere established that either A3 or other accused abet the deceased to commit suicide. On careful scrutiny of the testimony of eyewitnesses, it clearly shows that A3 has no mens rea to commit the offence but his intention is only to put the deceased Praveena to feel shame and humiliation. The main ingredient for abetment was not proved."

Against the said finding of the trial court, no appeal is filed

by the State. Therefore, it is clear that the said conclusion of the trial court that the charge against the accused under Section 306 IPC in respect of abetting the alleged suicide of deceased Praveena is not proved, holds good. In such circumstances, the finding of the trial court that the appellant/A-3 alone committed offence under Sections 294(b) and 354 IPC and also under Section 4B of TN Prohibition of Harassment of Woman Act, (hereinafter called as Act).

10. In the case on hand, the complainant/P.W.1/Sarala stated in her evidence that on the occurrence date ie., 08.09.2009 at about 6.30 a.m., the father of the appellant/A-1/Sundarraaj cut open the pipe line in her land and when she questioned the said Sundarraaj, he abused her as follows:-

“அதற்கு சுந்தரராஜி தேவடியா புண்டை, ஊராபோனவளே நீ யாருடி கேட்பது என்று கேட்டார்.”

She also stated that when her daughter P.W.2 Nagajothi questioned Sundarraaj, he was abused by A-3/appellant/Palanisami as follows:

“என் மகள் நாகஜோதி ஏன் என் அம்மாவிடம் சண்டைபோடுகிறாய் என்று கேட்டார். அதற்கு போடி தேவடியா கண்டாரஜலி ஊராபோனவளே என்று பழனிசாமி திட்டினார்.”

P.W.1 also stated that all the accused came together and quarrelled with her and when her another daughter Praveena (deceased) questioned the 3rd accused as to why he is abusing like that, in retaliation, the accused scolded her in filthy language. Further, the accused Palanisami caught hold of blouse of Praveena and torn it. Due to that, the chest portion of Praveena was exposed. She felt ashamed of that and she ran to her house and her elder sister P.W.2-Nagajothi went in search of her. According to P.W.1, the deceased Praveena poured kerosene and killed herself by putting fire. Thereafter, she lodged Ex.P.1/complaint to the Padalur Police Station. The Sub Inspector of Police, who deposed as Ex.P.10 stated that on 08.09.2009

at 8.30 hours, while he was on duty, one Sarala of Nakkasalem village came to the Station and gave complaint/statement. On receipt of the same, he registered the same in Crime No.443/09 and the said FIR is Ex.P.5. The Inspector of Police, who deposed as P.W.9 stated on 8.9.2009, on receipt of Ex.P.5-FIR in Crime No.443/09, he went to the occurrence spot and prepared observation Mahazar-Ex.P.2, Rough sketch-Ex.P.6 and conducted inquest on the body of the deceased Praveena and the inquest report prepared by him is Ex.P.7. Further the Inspector of Police stated that on the same date at 15.30 hours, he arrested all the accused, at Nakkasalem Bus station and sent them for remand. The body of the deceased Praveena was taken to Perambalur G.H. at about 1.40 pm on 8.9.2009, and post mortem was conducted by P.W.8-Dr.Thirumal and the post mortem report

was produced by him as Ex.P.3. According to him, the deceased would have died 6 to 8 hours before the time of post mortem due to burn injuries suffered by her. Viscera Report is Ex.P.4. Thus according to the prosecution, the deceased was abused and insulted by the 3rd accused/appellant before she committed suicide and thereby he committed offence under Section 354 and 4B of the Act.

11. However disputing the same, learned counsel for the appellant/accused contended that no such occurrence as alleged in Ex.P.1-complaint took place and the deceased was not abused or insulted by A-3 as claimed by the prosecution. The learned counsel for the appellant also contended that the evidence let in by the prosecution is contradictory as that of the averments alleged in the complaint and in view of the discrepancy between P.W.1 and P.W.10 evidence doubt arise as to whether complaint was lodged as claimed by the prosecution. It is also pointed out that the lodging of complaint itself is not clearly established and there is variation in the evidence of P.W1/complainant and P.W.10-Sub Inspector of Police regarding lodging of the complaint. P.W.1 stated in her evidence that she only lodged the complaint/Ex.P.1 and the contents of the same was written by her daughter P.W.2-Nagajothi and she signed in it before lodging the same with the Police. However, P.W.10-Sub Inspector of Police states that after P.W.1-Sarala arrived at the police station, he recorded the complaint statement as told by P.W.1 and registered the same as Ex.P.1-complaint. P.W.10 further stated that the contents of Ex.P.1-complaint is in his hand writing and the complainant signed in it after he read over and explained the contents of the statement to her. Thus doubt arises as to whether written complaint given by P.W.1 was ignored and fresh complaint was taken down from P.W.1 by the Police as contended by the learned counsel for the appellant.

12. It is contended by the learned counsel for the appellant /accused counsel that the trial court after holding that A3 has no mensrea to commit the offence alleged by the prosecution under Section 306, it is not proper to hold him guilty of the offence under section 354 IPC and consequently, u/s.294(b) 4B of the Act. It is also pointed out that the trial court has not given any reasoning except stating that the testimony of the witnesses clearly proved that A-3 used criminal force against the deceased and outraged her modesty and as such A-3 has not committed any offence under Section 354 IPC. It is also pointed by the learned counsel for the appellant that as per Section 4B of the Act, if any human commits suicide and if it is established that before her death she was subjected to harassment by any person such suicide is called as harassment

suicide and the said person is deemed to have abetted the suicide. According to the learned counsel for the appellant/accused, in the case on hand, the trial court has given a categorical finding that there is no evidence to prove that A-3 has mens rea to induce the victim to commit suicide and as such he cannot be held guilty under Section 4-B of the Act. He again reiterated that no acceptable evidence is placed before the court to hold him guilty under Section 354 IPC and the trial court without any basis has held him guilty under the above said provisions. In such circumstances, it is to be seen whether the contentions raised on the side of the appellant/accused is just and correct.

13. In Ex.P.1/complaint, it is stated that on 08.09.2009, at about 6.30 a.m., the 1st accused-Sundarraaj, the father of this appellant/3rd accused was seen digging the disputed lane between the house of the complainant and the accused and on seeing that, the complainant/P.W.1/Sarala, her daughters P.W.2-Nagajothi and deceased Praveena questioned him. Immediately A-3 Palanisami, the appellant herein abused P.W.2 Nagajothi in filthy language and pulled her hand. In the complaint, it is further stated that at the same time, A-3 Palanisami pulled the shirt of the deceased Praveena. It is further alleged in the complaint that in support of A-3 Palanisami, the other family members assembled and abused the complainant and her daughters in filthy language. It is further stated in Ex.P.1/complaint that on seeing that, the daughter of the complainant, Praveena apprehending her modesty would be outraged by Palanisami, went into the house and locked it from inside and inspite of repeatedly knocking at the door, she did not open the same, but within few minutes, smoke came out of the house and when the door was forcibly opened up, they found Praveena lying down fully burnt. Hence, they sought for action against the accused. Therefore, as per the averments in Ex.P.1/complaint, A-3 is alleged to have pulled the Nagajothi's hand and pulled the shirt of Praveena, but, nothing is found in Ex.P.1 that the shirt of Praveena was torn and her chest exposed and further nothing in Ex.P.1/complaint about the presence of anybody else in the place of occurrence at that point of time. It is pointed out by the learned counsel for the accused that subsequently, P.Ws.1 and 2 in their oral evidence have improved upon the averments in the complaint and falsely implicated the accused. It is also pointed out that the evidence of P.Ws.1 and 2 are contradictory and therefore, their evidence is not believable.

14. The complainant-Sarala who deposed as P.W.1 stated in her evidence that on 09.09.2009, at 6.30 a.m., the 1st accused/Sundarraaj was seen cutting the pipe line in her land and

when she questioned him, she was abused in filthy language by A-1/Sundarraaj. When P.W.2-Nagajothi intervened she was abused by A-3-Palanisami. All the accused came together and quarelled. It is further stated that her daughter Praveena interfered and she was abused by the accused in filthy language. It is not stated as to which accused did so. P.W.1 further stated that A-3 Palanisami torn open the shirt of the Praveena exposing chest and immediately thereafter, she ran into the house. According to her, when they broke open the door, they saw Praveena lying dead and burnt fully. Thus according to P.W.1, A-3 has abused P.W.2 Nagajothi in filthy language and pulled the shirt of Praveena. However, the other witness examined by the prosecution as P.W.2 stated that on 08.09.2009 at 6.30 a.m., A-1 Sundarraaj was digging the land in the lane and when questioned by her mother, he abused her in filthy language and also tried to assault by catching hold of her mother's hand. After her mother questioned, A-1 Sundarraaj and their family members came there and abused in filthy language. She also stated when she and Praveena interfered, Palanisami-A-1 scolded them in filthy language and A-4 and A-5 tried to assault them. P.W.2 also stated A-3 Palanisami pulled the shirt of Praveena and her chest exposed and therefore, she went inside the house and when they finally broke open the door, she was found dead. Thus P.W.2 stated differently from P.W.1 about the occurrence which took place. It is also pointed out that according to P.W.1, the occurrence took place on 09.09.2009, whereas P.W.2 stated that the occurrence took place on 08.09.2009. Further, it is admitted by P.W.2 that both sides abused each other in filthy language and it is also admitted by her that A-3 Palanisami alone pulled the shirt of her sister, therefore, she ran into her home and she suffered injuries in her chest. However, there is no medical evidence in support of the injuries suffered by Praveena in her chest. Further P.W.2 stated in her cross examination that she did not see her sister going inside the house and also she did not know where she went. Even though P.W.2 stated that at the time of occurrence, nearby people were also present, but, she has not stated subsequently the names of them in her evidence. Likewise, P.W.1 also failed to mention the names of any third parties present at the time of occurrence. In Ex.P.1 complaint, nothing is mentioned about the presence of other persons apart from complainant and accused at the occurrence spot. In such circumstances, doubt arises as to whether A-3 abused the deceased in filthy language and pulled her shirt and thereby exposing chest, if really occurred. As stated above, P.W.1 and 2 had given different dates in their evidence. Even though both states that the other people present, they have not mentioned any of them. The prosecution has failed to question P.W.2 about the occurrence. P.W.3 and 4 turned hostile and stated that they came out to their house only after hearing sound and they did not know anything about

subsequent occurrence. In such circumstances, in the light of contradictions between P.W.1 and P.W.2 evidence and the fact that Ex.P.1-complaint averments are different from the oral evidence and statement of P.W.1, doubt arise as to whether the alleged occurrence took place as claimed by the prosecution.

15. The learned counsel for the accused contended that admittedly, there was previous enmity between two groups and in such circumstances, in the absence of independent witnesses, it is not proper to hold the accused guilty of the offence under Section 294(b), 354 IPC and Section 4-B of the Act, on the basis of unacceptable evidence of interested witnesses P.Ws.1 and 2 alone. It is admitted by P.Ws.1 and 2 that the land dispute existed between themselves and the accused family lodged complaint in Padalur Police Station. P.W.2 has stated that in respect of land dispute complaint was lodged several times and compromise was arrived and in that background, it is to be seen as to whether the evidence of P.W.1 and P.W.2 is sufficient to hold the accused guilty of the offence alleged against him.

16. For the reasons stated above, in view of the discrepancy in the evidence let in by the prosecution, this court is of the view that the offence under Sections 294(b), 354 IPC and 4-B of the Act against A-3 is not clearly established beyond doubt by the prosecution. Further the alleged occurrence is stated to have taken place in the land situated in between the house of the complainant and the accused. It cannot be stated that this is the place where the public have access and admittedly it is a lane where no public have witnessed the occurrence. In such circumstances, the conclusion of the trial court that the place of occurrence will come under the purview of any other place as mentioned under Section 4 of the Act is not correct. Further in the case on hand, there is no evidence to show any other public was present and witnessed the occurrence. In such circumstances, considering the fact that previous enmity existed between both sides and no independent witness available to establish the alleged occurrence and various contradictions existing between the oral evidence of the Witnesses regarding the nature of occurrence and further the finding of the trial court that the accused/appellant herein abused the deceased Praveena and thereby caused harassment to the deceased and committed offence under Section 4B of the Prohibition of Harassment of Woman Act is not sustainable.

17. As rightly contended by the learned counsel for the appellant, in the absence of any clear cut evidence, is not proper to hold the accused guilty under Sections 294(b), 354 IPC and 4 B of the Act. Thus I am of the considered view that the trial court finding is not just and proper and hence, the same is liable to be set aside.

18. In the result, this Criminal Appeal is allowed. The conviction and sentence dated 31.05.2012 passed in S.C.No.112 of 2010 on the file of Sessions Judge, Mahila Court, Perambalur, is set aside. The appellant/accused is acquitted. Bail bond, if any executed by him shall stand cancelled. Fine amount, if any paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Sessions Judge,
Mahila Court, Perambalur.

2.-Do-thro The Principal Sessions Judge,
Perambalur.

3.The Judicial Magistrate,
Perambalur.

4.The Superintendent,
Central Prison,
Trichy.

5.The Director General of Police,
Mylapore, Chennai.

6.The District Collector,
Perambalur.

7.The Inspector of Police,
Padalur Police Station, Perambalur (Cr.No.443/2009)

8.The Public Prosecutor Office,
High Court, Madras.

9.The Section Officer,
Crl Section, High Court, Madras.

+lcc to Mr.Immanuel, Advocate sr.3114

Crl.A.No.343 of 2012

mg[col]
srg 3/2/2017