

Bail Slip

Crl A 601 of 2007

1. Kaliyamoorthy Appellant/Accused
The above said appellant/Accused was directed to be released on bail as per Order of this Court dated 18/07/2007 made in Crl Mp.No. 1 to 7 in Crl A. No. 601/07 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.601 of 2007

Kaliyamoorthy ...Appellant

vs.

State by
The Inspector of Police,
Cuddalore N.T. Police Station,
Cuddalore.
(Crime No.584 of 2005)Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 06.07.2007 passed by the learned Sessions Judge, Mahila Court, Cuddalore, in C.C.No.26 of 2007.

For Appellant : Mr.K.Govindhan

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The sole accused in C.C.No.26 of 2007 on the file of the learned Sessions Judge, Mahila Court, Cuddalore, is appellant herein. He stood charged for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002. The trial Court, after trial, by Judgment dated 06.07.2007, convicted the appellant/accused under Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002 and sentenced him to undergo six months rigorous imprisonment and imposed a fine of Rs.10,000/- in default to undergo rigorous imprisonment for three months. 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:

(i) P.W.1 is the victim in this case. There was a previous enmity between P.W.1's family and accused family regarding land dispute. On 28.09.2005 at about 8.50 a.m., when P.W.1 was standing out side the house, the accused came there and abused her with filthy language and indecently behaved with her. Thereafter, at about 3.00 p.m., P.W.1 went to the respondent police station and filed a complaint[Ex.P1] against the accused. P.W.4, the Head Constable, working in the respondent police station, on receipt of the complaint, registered the case in Crime No.584 of 2005 for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002 and prepared First Information Report[Ex.P2]. Thereafter, he proceeded to the scene of occurrence, examined the witnesses and recorded their statements. On the same day P.W.4 arrested the accused and remanded him to judicial custody. Thereafter, P.W.4 handed over the investigation to P.W.5 the Sub Inspector Police. P.W.5, the Sub Inspector of Police, working in the respondent police station, on receipt of the first information report, proceeded to the scene of occurrence, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 5 witnesses were examined and 2 documents were marked.

4. Out of the said witnesses examined, P.W.1 is the defacto complainant in this case. According to her, there was a previous enmity between her family and accused family regarding land dispute. On 28.09.2005 at about 8.50 a.m., while she was standing out side the house, the accused came there and abused her with filthy language and indecently behaved with her. Thereafter, at about 3.00 p.m, P.W.1's husband came there and after deliberation, they prepared complaint and lodged a complaint before the police station. P.W.2 is a relative of P.W.1 and accused and he is an eye witness to the occurrence. According to him, on 28.09.2005 at about 8.50 a.m., the accused came to the house of P.W.1 and abused her with filthy language and indecently behaved with her. In the cross examination, he has stated that there was a previous enmity between the accused and P.W.1's family. After the occurrence, he along with P.W.1 and her husband went to the police station, where P.W.1 has given statement before P.W.4 Head Constable and P.W.4 recorded the statement. P.W.3 is a neighbour of P.W.1, who is running a provision store near the scene of occurrence. Even though in his chief examination, he stated that he saw the occurrence and the accused abused P.W.1 with filthy language. In his cross examination, he

stated that he did not see the occurrence, his shop is situated away from the scene of occurrence and he could not heard the words uttered by the accused. According to him, P.W.1 and her husband after deliberation, prepared a complaint at about 10.30 a.m., and they file a complaint before the respondent police and the respondent police came to the scene of occurrence at about 1.00 p.m, and they also examined the witnesses and recorded their statements. P.W.4, the Head Constable working in the respondent police station, on receipt of the complaint, registered a case, proceeded to the scene of occurrence, examined the witnesses and recorded their statement and handed over the investigation to P.W.5, the Sub Inspector of Police. P.W.5, the Sub Inspector of Police, working in the respondent police station, on receipt of the investigation, he went to the scene of occurrence, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witnesses and marked two documents, namely, the 15th day ceremony invitation of accused father.

6. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

7. I have heard Mr.K.Govindan, the learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the respondent and perused the materials available on record.

8. P.W.1 is the victim in this case. There was a previous enmity between the accused family and P.W.1's family and they are close relatives. According to her, on the date of occurrence, the accused came to her house and abused her with filthy language and indecently behaved with her. In her cross examination, she stated that at the time of occurrence more than 50 persons present in the scene of occurrence and she admitted that there was a land dispute between P.W.1's family and accused family. After the occurrence, at about 3.00 p.m., P.W.1 along with P.W.1's husband and sister-in-law after some deliberation, prepared complaint, P.W.1 went to the police station and lodged a complaint. P.W.2 is cousin brother of P.W.1's husband. He is an eye witness to the occurrence. He has stated that there was previous enmity between the accused family and P.W.1's family. After the occurrence, at about 2.30 p.m., P.W.1's husband came to the house, then he along with P.W.1 and her husband went to the police station, where P.W.1 has given a statement before P.W.4, the Head

Constable and P.W.4 reduced the same and writing and thereafter, case was registered. P.W.3, who is also said to have seen the occurrence and in his cross examination he stated that he did not see the occurrence, his shop was situated away from the scene of occurrence and he could not hear the words uttered by the accused. Further, he stated that he along with P.W.1, her husband and P.W.2 after deliberation, prepared complaint and P.W.1 has given complaint before the respondent police at about 10.00 a.m., and the police also came to the scene of occurrence at about 1.00 p.m., and recorded the statement of witnesses at about 1.30 p.m., P.W.4, the Head Constable clearly stated that at about 3.00 p.m., P.W.1 came to the police station and filed a complaint and based on the complaint the case has been registered. Considering the evidence of P.Ws.1 to 3, there are lot of material contradiction in their evidence. Apart from that, even as per the evidence of P.W.1, before filing the complaint, there is some deliberation between her husband and sister in law and thereafter at about 3.00 p.m., P.W.1 file a complaint before the respondent police. P.W.2, the brother in law of P.W.1, says that the complaint was lodged by P.W.1 at about 3.00 p.m., P.Ws.1 and 2 went to the police station, where, P.W.1 has given the statement before P.W.4 and P.W.4 reduced the same and writing and registered the case. But, P.W.3 says that the complaint was prepared at about 10.00 a.m., and the same was received by the respondent police at about 10.30 p.m., and the respondent police also came to the scene of occurrence at about 1.00 p.m., and recorded the statement of witnesses at about 1.30 p.m., Hence, P.W.4 says that P.W.1 came to the police station at about 3.00 p.m. Hence, there is lot contradiction in filing the first information report. Apart from that P.W.1 herself admitted that there was a deliberation between her husband and sister in law, before preparing the complaint. In his cross examination, P.W.2 admitted that there was a previous enmity between the accused family and P.W.1's family. In his cross examination, P.W.3 stated that he did not see the occurrence, his shop was situated away from the scene of occurrence and he could not hear the actual words uttered by the accused. In his cross examination, P.W.1 says that at the time of occurrence more than 50 persons present there and none of the independent witness has been examined. In the above circumstances, it is highly unsafe to convict the accused based on the evidence of P.Ws.1 to 3 as there are lot of material contradictions in their evidence. In the above circumstances, I am of the considered view that the appellant is entitled for acquittal.

9. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in C.C.No.26 of 2007 dated 06.07.2007 on the file of the learned Sessions Judge, Mahila Court, Cuddalore is set aside and the appellant/accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand

cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Sessions Judge,
Mahila Court,
Cuddalore.
 2. -do- thro the Principal Session Judge,
Cuddalore.
 3. The Judicial Magistrate II
Cuddalore.
 4. The Inspector of Police,
Cuddalore N.T. Police Station,
Cuddalore.
 5. The Public Prosecutor,
High Court, Madras.
- +1 cc to MR. N. Suresh, Advocate Sr.No.2830

Cr1.A.No.601 of 2007

KS (CO)
VR(13/03/2017)

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