

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1538 of 2012
and
M.P.Nos.1 & 2 of 2012

Milton John

... Petitioner

//vs//

State rep. By
Sub-Inspector of Police,
Salem Railway Police Station,
Salem.

... Respondent

Prayer : Criminal Revision filed under sections 397 read with 401 of Criminal Procedure Code to call for the records in C.A.No.6 of 2012 dated 26.09.2012 on the file of the II Additional District and Sessions Judge at Salem confirming the judgment passed in C.C.No.39 of 2011 on the file of Judicial Magistrate No.III at Salem dated 19.12.2011 and set aside the same.

For Petitioner : M/s.P.Chandrasekar

For Respondent : Mr.V.Arul

Additional Public Prosecutor

O R D E R

The Petitioner is the sole accused in C.C.No.39 of 2011 on the file of the Judicial Magistrate No.III, Salem. He stood charged for the offences under Section 354 IPC and Section 4 (1) (J) of Tamil Nadu Prohibition Act. The Trial Court convicted the petitioner under Section 354 of IPC and sentenced him to undergo simple imprisonment for six months and also to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one month and acquitted him from/for the charge under Section 4 (1)(J) of Tamil Nadu Prohibition Act. Challenge the above said conviction and sentence, the petitioner had filed an appeal in Crl.A.No.6 of 2012 on the file of the II Additional District & Sessions Court, Salem. The lower appellate Court confirmed the conviction and sentence and dismissed the appeal. Now, challenging the above conviction and sentence, the petitioner is before this Court with this revision.

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

P.W.2 is the victim in this case. P.W.1 is the father and P.W.3 is the mother of the victim girl. They were residing at Bangalore and the victim girl was studying third year B.A course. On 27.11.2010, PWs 1, 2 and 3 and yet another sister of P.W.2, were travelling in Island Express from Bangalore to Kochin in Coach No.S-12 and they have been allotted with the berth Nos.17,18, 20 and 21 and P.W.2 was sleeping in a lower berth No.17. The accused, who was also travelling in the same train in the same coach, have been allotted in berth No.47, which is a reservation against cancellation ticket. At about 1.00 p.m., the accused came to the berth No.17, in which P.W.2 was sleeping and fell on her. Immediately, she pushed him down and raised alarm and on hearing the alarm, P.Ws.1 and 3 and other passengers woke up and caught hold of the accused, the same was informed to the Traveling Ticket Examiner, P.W.4, and at about 3.00 a.m., when the train reached Salem junction, P.W.1, the father of the victim has lodged a complaint before the respondent police.

3. P.W.7, Sub-Inspector of Police, attached to the respondent police station, based on the complaint, registered a case in Crime No.499 of 2010 for the offences under Sections 354 IPC and 4(1)(j) of the Tamil Nadu Prohibition Act and he arrested the accused, sent him for medical examination. P.W.6, Doctor, working in the Government Hospital, Salem, examined him and given a certificate (Ex.P.2) stating that the petitioner was under the influence of alcohol. Thereafter, P.W.7 recorded the statement of the witnesses and after completion of investigation, he filed a final report.

4. Based on the above materials, the trial Court framed charges for the offences under Sections 354 IPC and 4(1)(J) of Tamilnadu Prohibition Act and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 7 witnesses were examined and 3 documents were exhibited.

5. Out of the witnesses examined, P.W.1 is the father of the victim girl. According to him, P.W.1, 2, and 3 along with his another daughter were travelling in the Island express on 27.11.2010. They were allotted with the berth Nos.17,18, 20 and 21 in coach No.12, where the victim and her sister were sleeping in lower berths and P.Ws.1 and 3 were sleeping in the middle berth. At about 1.00 p.m., they heard the noise of P.W.2 and found that the accused was lying between 2 berths, when they enquired P.W.2 told them that the accused had fall on her while she was sleeping. Then, he informed the same to the T.T.E and lodged a complaint at Salem Railway Police. P.W.2 is the victim girl. According to her, she was sleeping in lower berth No.17

and at about 1.00 p.m., she found that somebody had fallen on her. Immediately, she woke up and pushed the man down and raised alarm, and when her father questioned the same, the accused told him that mistakenly he had fallen on P.W.2 and he had also apologized for that. Thereafter, her father had given a complaint before the respondent police. P.W.3 is the mother of the victim girl. She has also spoken about the occurrence. P.W.4 is the Travelling Ticket Examiner in Coach No.12 in Island express. He has spoken about the berths allotted to P.Ws.1, 2, 3 and the accused. According to him P.Ws,1,2, and 3 and yet another sister of P.W.2 were allotted with berth Nos.17,18, 20 and 21 and the accused was allotted with berth No.47, which is Reservant Against Cancellation Seat(RAC). P.W.5 is the another Travelling Ticket Examiner. P.W.6 is the doctor, who examined the accused, and given a certificate Ex.P.2, says that the accused was under the influence of alcohol. P.W.7 is the Sub-Inspector of Police, who registered the case, conducted investigation and after completion of investigation, he filed a final report.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness nor marked any documents on his side.

7. Having considered all the above materials, the trial Court convicted the petitioner/accused for the offence under Section 354 IPC as mentioned in paragraph one of the judgment and acquitted the petitioner for the offence under Section 4(1) (j) of the Tamilnadu Prohibition Act. Aggrieved against the same, he filed an appeal in C.A.No.6 of 2012 before the II Additional District and Sessions Court, Salem and the lower appellate court confirmed the conviction and sentence and dismissed the appeal. Now challenging the same the present revision has been filed.

8. The learned counsel appearing for the petitioner submits that from the evidence of P.W.2, the occurrence has been taken place inadvertently in the midnight and absolutely there is no intention on the part of the petitioner to outrage the modesty of the victim. Even as per the evidence of P.W.2, the petitioner fell down on her. Immediately, she pushed him down and thereafter, he realized the mistake and the petitioner apologized to the victim girl and told her that he has mistakenly came to her berth and fall on her. Apart from that there is no materials available on record to show that the petitioner had any intention to outrage her modesty or he has knowledge that the act is likely to outrage her modesty. It is only an accident and the Court below without considering the above materials convicted the appellant, even after acquitting

him for the offence under Section 4(1)(j) of the Tamil Nadu Prohibition Act holding that the prosecution has failed to prove that the petitioner was under influence of alcohol.

9. Per contra, the learned counsel appearing for the respondent would contend that the evidence of victim, P.W.2, is that she was sleeping in the berth No.17 and the petitioner was allotted with the berth No.47, which is RAC and there is no occasion for him to come to berth NO.17 and mistakenly fall on her. P.Ws.4 and 5 has also confirmed that he was allotted with berth No.47, and the petitioner has deliberately indulged in the act of outraging the modesty of the victim and the both the Courts below considering the entire materials convicted the petitioner and there is no reason to the concurrent finding of the courts below.

10. I have considered the rival submissions and perused the materials available on record carefully.

11. P.W.2 is the victim girl in this case. Perusal of her evidence, it could be seen that she was sleeping in berth No.17 in coach No.S12, the petitioner was also travelling in the same coach, and he was allotted with berth NO.47. P.W.4 the TTE also confirmed the same. It is the evidence of P.W.2 that, at about 1.00 p.m., in midnight, she felt that somebody was sitting in her berth and thereafter she found some weight fall on her. Hence, he woke up and pushed the man down, and shouted, then her father got down from the middle berth, at that time, the petitioner/accused told his father that he mistakenly came to her berth and fall on her. On the cross examination, she has clearly admitted that the petitioner did not do anything other than he fell on her and he did not do any harm on her and immediately, he also apologized to her that he has mistakenly came to her berth. P.Ws.1 and 3 father and mother, who were also travelling along with the victim also did not say that the petitioner has acted with any intention to outrage the modesty or used any criminal force.

12. To bring home the offence under Section 354 IPC, the prosecution should prove that the accused should assault or use any criminal force intending to outrage the modesty or knowing it to be likely to thereby outrage her modesty. But, in the instant case, absolutely, there is no evidence to show that the petitioner has any intention to assault or used any criminal force with an intention to outrage her modesty. From the evidence of P.Ws.2 and 3, it is only the petitioner inadvertently came to the berth of P.W.2 and he tried to sleep over there. Immediately, after the occurrence, he has also apologized to P.W.2. Apart from that it is also not proved by the prosecution that the petitioner was in an intoxicated mood and the trial court acquitted the petitioner for the offence

under Section 4(1)(j) of the Tamilnadu Prohibition Act. Hence, I am of the considered view that the prosecution failed to prove the offence under Section 354 IPC beyond any reasonable doubt. Hence, the petitioner is entitled for acquittal. The courts below without considering the evidence on proper perspective erroneously convicted the petitioner, which is liable to be set aside.

13. In the result, the Criminal Revision is allowed and the conviction and sentenced imposed on the petitioner under Section 354 IPC is set aside and the petitioner is acquitted from the charge. The bail bond, if any, executed by him, shall stand cancelled. Fine amount, if any, paid by him, shall be refunded. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

mrp

To

1. The II Additional District and Sessions Judge,
Salem.
- 2.The Principal Sessions Judge, Salem
3. The Judicial Magistrate No.III,
Salem.
- 4.The Chief Judicial Magistrate, Salem
5. The Public Prosecutor,
High Court, madras.

+2cc to Mr.P.Chandrasekar, Advocate SR.No.71827

RK(CO)
GN(23/04/2018)

Crl.R.C.No.1538 of 2012

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