

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 22.06.2018]

[Pronounced on : 10.07.2018]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.56 of 2018

M.Kannabiran ... Petitioner/Accused  
... Vs ...

State Rep. by  
The Inspector of Police (L & O),  
H1, Washermenpet Police Station,  
Chennai - 600 021.  
Crime No.660/2014. ... Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w. 401 of Cr.P.C. against the judgment and conviction dated 16.12.2017 made in C.A.No.244 of 2015 on the file of the VII Additional Sessions Judge at Chennai, dismissing the appeal by confirming the judgment and conviction and sentence in C.C.No.2345 of 2014 on the file of the XV Metropolitan Magistrate, G.T., Chennai, dated 19.08.2014 under Sections 354, 354(a), 336 and 506(ii) IPC and sentencing him under Section 354(A) for one year simple imprisonment and to pay a fine of Rs.10,000/- in default to undergo 3 months simple imprisonment and praying to set aside the same.

For Appellant : Mr.Dr.G.Krishnamurthy  
For Respondent : Mr.R.Surya Prakash,  
Government Advocate  
- - - - -

ORDER

The learned Government Advocate takes notice for the respondent.

2. By consent, this Criminal Revision Case is taken up for final disposal.

3. This Criminal Revision is directed against the judgment and conviction dated 16.12.2017 passed by the learned VII

Additional Sessions Judge at Chennai, in C.A.No.244 of 2015, dismissing the appeal by confirming the judgment of conviction and sentence passed by the learned XV Metropolitan Magistrate, G.T., Chennai, in C.C.No.2345 of 2014 dated 14.08.2014.

4. The case of the prosecution is that one Kannabiran, who is the petitioner herein/accused is residing nearby one portion of the victim's house. He always used to utter ugly words and always told to the victim that you are having a blind man as husband and he will help her in the night. The victim don't want to say regarding this to others, since she is having grown-up children. On 02.06.2014, when her son went outside for a marriage, in the house, her husband and her daughter were sleeping and in the early morning at about 4.15 a.m., the victim was doing domestic work and at that time, she noticed that one person was coming near her house and when she suddenly turned, she saw that the culprit Kannabiran/accused said that he wants to sleep with her and also he caught her hand and also he pressed her breasts. Immediately, she pushed the accused and shouted and cried for help. The accused immediately pressed the throat of the victim and said some bad ugly words and after her shouting, her daughter and neighbours rushed to the spot and the accused immediately, left her and run from the scene of occurrence.

5. Learned counsel appearing for the revision petitioner/accused would contend that the evidence of P.W.1 is not specific about the alleged charge and P.W.3 is a blind man and his evidence has to be eschewed and further contended that non-compliance of the mandatory provision under Section 154 of Cr.P.C. in respect of an offence alleged to have committed under Sections 354 and 354 (A) IPC vitiates the entire investigation.

6. In short, the complainant was residing along with her blind husband and daughter and son. The appellant/accused is living in the same compound and he used to give sexual comments to the complainant by stating that since her husband is blind, invited her for sexual intercourse with him and caused mental agony to the complainant. Since the complainant is having grown up children, she tolerated all the misdeeds committed by the accused. On 02.06.2014, in the early hours of 4.15 a.m, when she was looking after her household work sensed that somebody is entering into the house and when she looked outside, there stood the accused stating that "எனக்கு உன் கூட படுக்க ரொம்ப நாளா ஆசை இன்னைக்கு உன் பிள்ளையம் வீட்டில் இல்லை. வாடி ஒன்றாக படுக்கலாம்" then he pulled her hands and embraced her and put his hands on her breast thereby he outraged her modesty and caused mental agony and when the victim shouted and cried, the accused further pressed her neck with a knife like weapon and threatened her by stating that if she shouted, he will murder her by throttling

her neck and thereby, he criminally intimidated her to cause death and thereby, the accused committed an offence punishable under Sections 354, 354(A) and 506(i) of IPC.

7. On behalf of the prosecution, they have examined as many as six witnesses and all of them have given cogent evidence supporting the case of the prosecution and on the basis of the evidence and materials available, the learned Magistrate has come to a correct conclusion that the prosecution has proved its case beyond reasonable doubt against the appellant/accused and convicted and sentenced him under the above said Sections.

8. The evidence of P.W.1 is corroborated by the evidence of P.W.2, her daughter, who was sleeping at that time and on hearing her mother's alarm voice, she came and saw that the accused pressing her mother's neck and shouting in an vulgar and obscene language and when she went to protect her mother, the accused ran away. The evidence of P.W.1 is further corroborated by the evidence of P.W.3, who is her husband and he deposed in his evidence that since he is a blind man, he could not see the occurrence but could hear and sense the incident of the accused beating his wife and when he tried to catch hold of him, he ran away by pulling him aside and their evidence is further corroborated by the evidence of P.W.4 and P.W.5, who deposed that they were walking in the main road and on hearing the lady voice, they went to see the place of occurrence and saw P.W.1 raising alarming voice and further P.W.1 was standing with her dress crushed and in a disturbed state and they saw some injury also on her left hand and also saw the accused running from there and all of them caught hold of him and handed over to the police.

9. In view of the clear and cogent evidence of P.W.1 which duly stands corroborates the complaint-Ex.P.1 and also the two independent witnesses, who are all the general public and caught hold of him and handed over to the police, both the Courts below have correctly come to a conclusion that the accused was present in the scene of occurrence and he ran away from the portion of P.W.1-victim and the evidence of P.W.1 was duly corroborated by the evidence of P.W.2 and though P.W.3, husband of P.W.1 is a blind man, he could sense what is happening in the house. From the prosecution witness, it is demonstrated before the Court that the accused had catch hold of a women's hand and breast and embraced her thereby, the accused had committed constitutes of an offence under Section 354 IPC and when any act done in the presence of woman is clearly suggestive sex according to the common notions of mankind that must fall within the mischief Section of 354 IPC and accused, was rightly held guilty of outraging modesty of the victim and hence, both the Courts below have correctly come to a conclusion that the evidence of P.W.1



was duly corroborated by ocular evidence of P.W.2 and P.W.3, which stands corroborated by further evidence of P.W.4.

10. Sub-clause 3 of Section 354-A (3) reads as follows:-

3. "Sexual Harassment", meaning of.- The offence of 'sexual harassment' as defined in this Section can be caused by either of the following:

- (i) either physical contact and advances involving unwelcome and explicit sexual overtures;
- (ii) or a demand or request for sexual favours;
- (iii) or making sexually coloured remarks;
- (iv) or forcibly showing pornography."

11. From the evidence of P.W.1-victim, both the Courts below have concurrently come to a correct conclusion that there is advances by the accused involving unwelcome and explicit sexual overtures and also the words spoken to by the accused, as extracted above, are request for sexual favours and words commented thereupon being sexually with coloured remarks, both the Courts below have concurrently held that the accused have committed the offence under Section 354(A) of IPC which is well merited and well considered and does not warrant any interference by this Court. Weighing the words spoken to by the accused to P.W.1 with regard to the sexual advancement and unwelcome and explicit sexual overtures, it is the duty of the trial Court to weigh the words spoken to by the accused under the 'common notions of mankind' which has to be gauged by contemporary societal standards. Accordingly, I do not find any irregularity or infirmity in arriving at a conclusion that the revision petitioner/accused has committed the offence under Section 354 (A) IPC against the victim. The concurrent findings of the Courts below do not warrant any interference.

12. Learned counsel appearing for the revision petitioner/accused as an last attempt would contend that as laid down under Section 154 (1) of Cr.P.C., in respect of offences under Sections 354 and 354 (A) of IPC against the woman that the complaint has to be registered and enquired by a lady officer and in the instant case, the Investigating Officer is a male officer. Therefore, the investigation is bad in law.

13. I have given my anxious consideration to the said contention and I am unable to affix the seal of approval for the said contention for more than one reason. There is no delay on the part of P.W.1 in giving the complaint and handing over the accused to the police.

14. Section 154 (1) of Cr.P.C. reads as follows:-

"154. Information in cognizable cases.- (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer [emphasis supplied]"

15. Though it is desirable to record the substance of information by lady officer and every case has to be looked into keeping in view of the facts and circumstances of the case, where the prosecution recording the statement and making an endorsement and registering FIR and hence, the same cannot be thrown out of consideration merely because, the substance of information was not recorded in the manner and it ought to have been recorded under Section 154 (1) of Cr.P.C.

16. After the amendment Act 13/2013 which coming into effect in 2013 provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-B, Section 376-C, Section 376-D, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer.

17. Laying the emphasis on the underscored portion, the learned counsel appearing for the revision petitioner would contend that since the information was recorded by a male officer, the same is bad in law. As observed by me in the earlier portion, there is no delay in registering. In respect of alleged offences under Sections 354 and 354-A of IPC and

other Sections mentioned therein, by way of insertion, it is amended that such information shall be recorded by a woman police officer or any woman officer. In the instant case, no doubt true that FIR was registered by a male officer that does not by itself vitiating setting the criminal law into motion by P.W.1-victim girl. In the instant case, the word "shall" as noted in the amended portion has to be read as "may". Since there is no delay in filing the FIR, if any woman officer is available, it is always open to the Station House Officer to register the FIR. In the instant case, as on the facts and circumstances of the case as there is no delay on the part of P.W.1 and the accused has been caught by the general public and handed over to the police, I am of the considered view that the same will not be vitiated the investigation nor setting the criminal law into motion.

18. In this view of the matter, the last contention raised by the learned counsel for the appellant stands negatived and the registration of FIR though by a male officer in respect of offences under Sections 354 and 354 (A) IPC is valid.

19. For the reasons stated above and in the absence of any other material, I am not inclined to interfere with the concurrent orders passed by both the Courts below and accordingly, this Criminal Revision Case is dismissed and the concurrent judgments of conviction and sentence passed by both the Courts below are confirmed.

Sd/-  
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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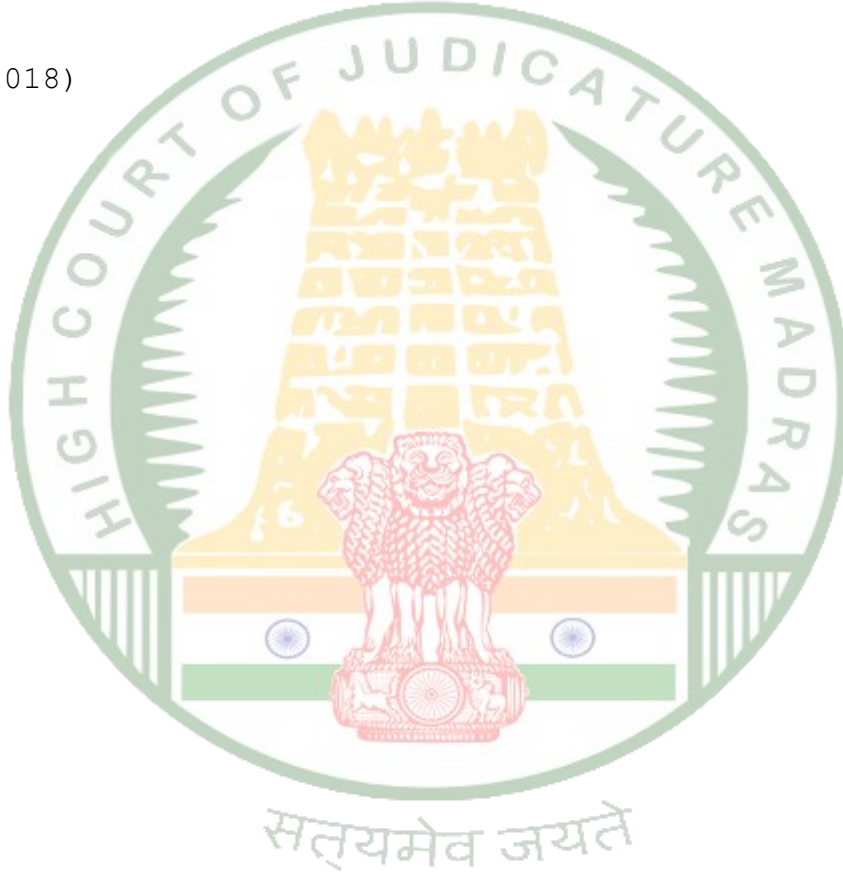
To

1. The VII Additional Sessions Judge,  
Chennai.
2. XV Metropolitan Magistrate, G.T.,  
Chennai.

3. The Inspector of Police (L & O),  
H1, Washermenpet Police Station,  
Chennai - 600 021.
4. The Public Prosecutor,  
High Court, Madras.

Order in  
Crl.R.C.No.56 of 2018

KK(CO)  
TR(19/07/2018)



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