

BAIL SLIP

The Petitioner/Accused Murugan S/o Thangavel Kounder was enlarged on Bail in Crl MP No:1 of 2011 in Crl.RC.1251/2011 by this Hon'ble Court dated 14.09.2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2018

CORAM:

THE HON'BLE MR. JUSTICE N. ANAND VENKATESH

Criminal Revision Case No.1251 of 2011

Murugan

...Petitioner/Accused

vs.

State by the Inspector of Police
Valavanur Police Station
Villupuram District
(Cr. No.36 of 2010)

...Respondent/Complainant

Criminal Revision Case preferred under Sections 397 and 401 Cr.P.C. seeking to call for the records of the Principal Sessions Judge, Villurpuram District and set aside the judgment passed in C.A. No.23 of 2011 dated 29.07.2011, confirming the conviction and sentence passed by the Judicial Magistrate No.II, Villupuram, Villupuram District in C.C. No.217 of 2010 dated 08.04.2011, convicting the petitioner for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and sentencing him to undergo one year rigorous imprisonment and to pay fine of Rs.1,000/-, in default to undergo three months simple imprisonment.

For petitioner:Mr. V. Murugesan

For respondent:Ms. S. Thankira

Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed aggrieved by the judgment dated 29.07.2011 passed by the learned Principal Sessions Judge, Villupuram in Crl. A. No.23 of 2011, confirming the judgment of conviction and sentence dated 08.04.2011 passed by the learned Judicial Magistrate No.II, Villupuram in C.C. No.217 of 2010.

2 The case of the prosecution in brief:

2.1 One Vijayalakshmi (P.W.1) is a native of Kalichikuppam village and was a coolie worker. On 26.01.2010, she had gone to collect firewood. While so, about 1.00 p.m., the petitioner, who also belongs to the same village, came to the scene of occurrence, abused her and also pulled her saree and outraged her modesty. The complaint (Ex.P.1) was given by P.W.1 on 28.01.2010, based on which, an FIR was registered in Cr. No.36 of 2010 (Ex.P.3) for an offence under Section 294(b) IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

2.2 Investigation was taken up by Revathy (P.W.7), who visited the scene of occurrence and took statements from Saroja (P.W.2) and Karapagam (P.W.3), who had accompanied P.W.1 at the time of occurrence and she prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.4) in the presence of Pushpa (P.W.5) and Perumal (P.W.6). The petitioner was arrested on the same day and was produced before the Court concerned and was remanded to judicial custody.

3. Based on the investigation, a final report was filed against the petitioner for the alleged offence under Section 294 (b) IPC read with Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. The Trial Court took cognizance of the offence. The prosecution examined P.W.1 to P.W.7 and marked Exs.P.1 to P.4 in order to substantiate their case.

4. On the completion of trial, the Trial Court questioned the petitioner under Section 313 Cr.P.C. by bringing to his notice the materials that are against him and which have been collected in the course of trial. But, the petitioner denied the very occurrence itself.

5. The learned Judicial Magistrate No.II, Villupuram, on consideration of the oral and documentary evidence and on assessment of the facts and circumstances of the case, came to the conclusion that the prosecution have proved the case beyond reasonable doubts and therefore, proceeded to pass a judgment convicting the petitioner under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and imposed a sentence of one year rigorous imprisonment and fine of Rs.1,000/- and in default, to undergo three months simple imprisonment.

6. The petitioner, aggrieved by the said judgment of conviction and sentence, preferred an appeal before the Principal Sessions Court, Villupuram. The Appellate Court, on consideration of the evidence and also the materials placed on record, concurred with the judgment passed by the Trial Court

and confirmed the judgment of conviction and sentence passed against the petitioner. Aggrieved by the same, the petitioner has preferred the present Criminal Revision Case.

7. The learned counsel for the petitioner submitted that there is a delay of two days in filing the complaint and that apart, the victim, viz., P.W.1, who had given the complaint only on the ground that the petitioner had abused her and pulled her saree, during the course of evidence, had stated that the petitioner had raped her and outraged her modesty. Therefore, the learned counsel for the petitioner would contend that there is no truth in the statement made by P.W.1. In order to substantiate this point, the learned counsel for the petitioner further brought to the notice of this Court, the evidence of P.W.1 to P.W.3, who also accepted the fact that there was previous enmity between the father of P.W.1 and the petitioner. The learned counsel for the petitioner also brought to the notice of this Court the evidence of P.W.5, which runs totally contrary to the case of the prosecution. The learned counsel, therefore, would submit that both the Courts below have failed to take note of these vital facts and have erroneously proceeded to pass a judgment of conviction and sentence against the petitioner.

8. Per contra, the learned Government Advocate (Crl. Side) would contend that in a case of this nature, where, harassment of a woman and outraging her modesty are involved, it is enough for the Court to take into consideration, the evidence of the victim and there is no requirement for any corroboration, if the Court finds that the evidence of the victim is cogent and consistent. She would further contend that P.Ws. 2 and 3 have also supported the case of the prosecution and the evidence of P.Ws.1 to 3 will clearly show that the petitioner had harassed the victim, viz., P.W.1 and an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, has been made out. She would also contend that both the Courts below have taken into consideration, the facts and circumstances of the case and also the evidence and have factually come to the conclusion that the petitioner has committed an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and as such, there is no ground for this Court, in exercise of its revisional jurisdiction, to interfere with the same.

9. This Court has carefully considered the arguments made on either side and also the materials placed on record, including the judgments passed by the Trial Court and the Appellate Court.

10. P.W.1 in this case is the victim and she was the one who set the law in motion by giving a complaint against the petitioner on 28.01.2010. In the complaint, her specific case is that on 26.01.2010, about 1.00 p.m., the petitioner abused her and pulled her saree and thereby, outraged her modesty. Even though this incident is said to have taken place at 1.00 p.m. on 26.01.2010, the complaint was given before the respondent police only on 28.01.2010 about 9.30 a.m. There is no explanation as to why there was a delay in lodging the complaint, more particularly, when P.W.1 knows the petitioner even before the alleged occurrence.

11. The respondent police have investigated the case and a final report has been filed for an offence under Section 294(b) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. P.W.1, at the time of examination, gives a completely different version about the incident. She goes to the extent of saying that the petitioner forcibly committed rape on her and also promised to give her money and thereafter, she proceeds to state that the petitioner came to her house and abused her in a filthy language.

12. P.Ws.2 and 3, in their evidence, have stated that they were also collecting firewood in the same place and they rushed to the scene of occurrence after hearing the cries of P.W.1. Even though P.W.5 is a mahazar witness, she goes on to state that she was also there near the scene of occurrence and she was also collecting firewood and when she proceeded to the scene of occurrence, she saw the petitioner and P.W.1 in a compromising position.

13. The evidence of P.W.1 to P.W.3 also clearly brings about the fact that there is previous enmity between the father of P.W.1 and the petitioner.

14. A cumulative reading of the evidence of the witnesses points out the fact that the incident had happened on 26.01.2010. Even though P.W.1 had given a completely different version about the alleged outrage of modesty at the time of trial which was not her version even in the complaint, it is difficult to completely ignore the evidence of P.W.1, since, no woman will go to the extent of cooking up a false story at the expense of her fidelity and dignity. Even though P.Ws.2 and 3 are not direct witnesses to the incident, they have heard the cries of P.W.1 and have rushed to the scene of occurrence and have seen the petitioner rushing away from the scene of occurrence. In the same manner, P.W.5 has also seen the petitioner along with P.W.2 in the scene of occurrence and she has given a version to the effect that she saw them in a compromising position. Therefore, the fact remains that the

petitioner was very much present in the scene of occurrence at the time when the incident took place and there is no reason for this Court to disbelieve the evidence of P.W.2, P.W.3 and P.W.5. The evidence of P.Ws. 2 and 3, in fact, are relevant facts under Section 7 of the Evidence Act since they rushed to the scene of occurrence immediately on hearing the cries of P.W.1.

15. Falsus in uno, falsus in omnibus, is a principle which is not followed by the Courts in India. It is important for the Court to look at the overall circumstances of the case and the evidence of the witnesses and separate the chaff from the grain. Coming to the case at hand, while appreciating the evidence, this Court must also take into consideration the fact that this incident had taken place in a remote village and therefore, there are always constraints for women to immediately approach the police, more particularly, in cases of this nature. Therefore, just because there was a delay in filing the complaint, this Court does not find it to be fatal to the case of the prosecution.

16. In view of the foregoing discussion, this Court is of the considered view that both the Courts below have properly appreciated the evidence available on record and have come to the conclusion that the petitioner has committed an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. The findings of both the Courts below are based on facts and this Court, sitting in revisional jurisdiction, cannot re-appreciate the evidence unless this Court finds that there is manifest perversity committed by the Courts below while appreciating the evidence available on record. In such perspective of the matter, this Court does not find any ground to interfere with the judgment of conviction passed against the petitioner and the same is hereby confirmed.

17. On the question of sentence, this Court, taking into consideration, the age of the petitioner and also the passage of time, deems it fit to modify the sentence imposed on the petitioner. Accordingly, the period of one year rigorous imprisonment imposed by the Courts below is modified to three months rigorous imprisonment. However, in exercise of powers under Section 357(4) Cr.P.C., this Court awards a compensation of Rs.10,000/- payable to the victim, viz., P.W.1 by the petitioner and in default to undergo three months simple imprisonment. The learned Judicial Magistrate No.II, Villupuram, shall ensure that the petitioner deposits the compensation amount within a period of four weeks from the date of receipt of a copy of this order and shall issue notice to the victim, viz., P.W.1 and permit her to withdraw the compensation amount.

In fine, this Criminal Revision Case is partly allowed by modifying the sentence to the extent indicated above. The Trial Court is directed to issue warrant against the petitioner to secure him and remand him into prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

1. The Principal Sessions Judge
Villurpuram District
2. The Chief Judicial Magistrate,
Villupuram District
3. The Judicial Magistrate No.II
Villupuram
Villupuram District
4. The Inspector of Police
Valavanur Police Station
Villupuat District
5. The Public Prosecutor
High Court of Madras
Chennai 600 104

Copy To

The Section Officer,
Criminal Records Section,
HighCourt, Madras.

+1cc to Mr.V.Murugesan, Advocate, S.R.No.47116

Criminal Revision Case No.1251 of 2011

SVN(CO)
BM 02/08/2018