



BAIL SLIP

Thirupathi, aged about 26 years, S/o.Pandithevar, Male, Petitioner/Accused was released on bail as per the order of this Court dated 30.08.2011, made in CrI MP No.1/11 in CrI A (MD)249 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A.(MD)No.249 of 2011

Thirupathi

... Appellant /Appellant/Accused

Vs.

State represented by,

The Assistant Superintendent of Police,

Kamuthi.

... Respondent/Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the judgment and conviction of the Trial Court dated 16.06.2011, in Spl. S.C.No.254 of 2011, on the file of the Principal Sessions Judge, Ramanathapuram and acquit this accused.

For Appellant : Mr.V.Kathirvelu, Senior Counsel

For Mr.R.Veeramanikandan

For Respondent : Mrs.S.Bharathi

Government Advocate (CrI. Side)

J U D G M E N T

The appellant was found guilty and sentenced vide judgment dated 16.06.2011 in Spl.S.C.No.254 of 2009, on the file of the learned Principal Sessions Court, Ramanathapuram, as follows:-

Accused	Penal Provisions	Punishment
Sole Accused	341 IPC	To undergo one month simple imprisonment



	Section 4 of TNPWH Act, 1998	To undergo 2 years rigorous imprisonment and to pay a fine of Rs.10,000/-. In default, to undergo 6 months rigorous imprisonment.
WEB COPY	3(1)(xi) of SC/ST (POA) Act	To undergo 1 years rigorous imprisonment and to pay a fine of Rs.1,000/-. In default, to undergo 3 months rigorous imprisonment

Questioning the same, this criminal appeal has been filed.

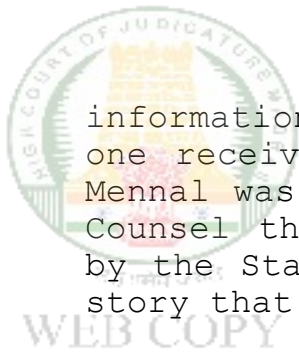
2.Heard the learned Senior Counsel appearing for the appellant and the learned Government Advocate (Crl. Side) appearing for the respondent.

3.Charge against the appellant is that on 12.10.2007 at about 03.00 p.m. in Vannankulam Village, the appellant had wrongly continued the victim and pulled her right hand and also insulted her by referring to her community. In this regard, the victim/P.W.1 lodged Ex.P.1/complaint on the file of All Women Police Station, Kamuthi on 15.10.2007 at about 07.00 p.m., which led to registration of Crime No.7 of 2007. Since in the further statement offences under Scheduled Caste and Scheduled Tribe Act were also attracted, the Assistant Superintendent of Police, Kamuthi took up the further investigation. After completing all the usual formalities, final report was laid before the learned Judicial Magistrate, Kamuthi and committed vide P.R.C.No.6 of 2008. The case was taken up for trial in Spl.S.C.No.254 of 2009. Charges under Section 341 of I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1988 and Section 3(1)(xi) of Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989 were framed against the appellant. The appellant denied the charges and claimed to be tried.

4.The prosecution examined as many as many as 8 witnesses and marked Exs.1 to 7. On the side of the accused no evidence was adduced. The incriminating circumstances were put to the accused under Section 313 of Cr.P.C.

5.The learned Trial Judge after detailed consideration of the evidence on record convicted and sentenced the appellant as mentioned above.

6.The learned Senior Counsel appearing for the appellant pointed out that P.W.6 was the Sub Inspector of Police, All Women Police Station, Kamuthi, during the relevant time and in her testimony, she admitted that the mother of the victim lodged information with the victim on the very next day and that C.S.R. number was also issued. She would further admit that the



information lodged by Meenal/Mother of the victim was the earliest one received by the Police. Admittedly the information lodged by Mennal was not produced before the Court below. The learned Senior Counsel therefore contended that the earliest information received by the State was deliberately suppressed as it painted a different story that is not in consensus with the eventual charge.

7.The learned Senior Counsel also contended that in this case FIR came to be registered based on Ex.P.1/complaint that was lodged on 15.10.2007. Delay has not at all been explained. In view of these serious defects, the learned Senior Counsel wanted this Court to reverse the judgment of the Court below.

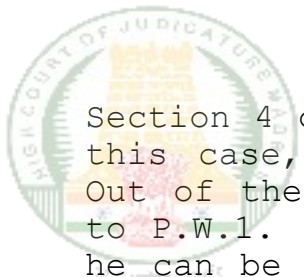
8.Per contra, the learned Government Advocate (Crl. Side) submitted that the impugned judgment of the Court below does not warrant any interference and wanted this Court to dismiss the appeal.

9.I carefully considered the rival contentions and perused the evidence on record.

10.As rightly pointed out by the learned Senior Counsel appearing for the appellant that the prosecution case rests on Ex.P.1/complaint. But then, in Ex.P.1/complaint, the victim has not mentioned anything about the insult on the ground of her community. That is why when FIR was registered in Crime No.7 of 2007 for the offence under Sections 341 and 354 of I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, the provisions of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, were not invoked. Since the earliest information lodged by the victim's mother/Meenal on the very next day was deliberately suppressed by the prosecution, this Court is of the view that there is considerable merit in the learned Senior Counsel's submission that the community angle has been brought on record later to strengthen the prosecution case.

11.I am therefore of the view that the conviction and sentence imposed on the appellant under Section 3(1)(xi) of Scheduled Cast and Scheduled Tribe (Prevention of Atrocities) Act, 1989, deserves to be set aside and it is accordingly set aside.

12.But then, the prosecution case cannot be thrown out in toto. The victim's mother/Meenal has clearly stated that she went to the Police Station on the very next day. In fact this the stand of P.W.6 also. From this one can come definitely infer that the appellant had caused some serious trouble to the victim, which warranted the victim's mother to seek the help of police. Far from holding that the prosecution case is weakened because of suppression of the earlier information, I am of the view that it only reinforces the prosecution case. Therefore, I am inclined to sustain the conviction of the appellant for the offence under Section 341 and



Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. In this case, the accused was also levied with fine of Rs.10,000/-. Out of the said amount Rs.5,000/- has been ordered as compensation to P.W.1. I am of the view that instead of sending him to prison, he can be directed to express his unconditional apology of remorse and regret and also pay some more compensation to the victim. The learned Senior Counsel is agreeable for the course of action indicated by the Court. Therefore, even while sustaining the conviction of the appellant for the offence under Section 341 and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, the sentence of imprisonment imposed on the appellant is modified and reduced to the period already undergone. He is instead directed to deposit a sum of Rs.15,000/- to the credit of Spl.S.C.No.254 of 2009, on the file of the learned Principal Sessions Court, Ramanathapuram, within a period of four weeks from the date receipt of a copy of this judgment. While depositing the compensation amount, the appellant shall execute a notarised s affidavit expressing his sense of shame, remorse and regret for his conduct towards victim. He will further give an undertaking that he will not indulge in any such conduct towards any other woman in future. Since the victim is said to be no more, a copy of the affidavit will be handed over to P.W.2 along with the compensation amount by the learned Trial Judge. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1.The Principal Sessions Court,
Ramanathapuram.

2.The Assistant Superintendent of Police,
Kamuthi.

3.The District Munsif cum Judicial Magistrate,
Kamuthi, Ramanathapuram District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.RAJA KARTHIKEYAN, Advocate (SR-76851[F] dated
23/07/2019

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Crl.A. (MD)No.249 of 2011

22.07.2019

__KK/SAR/10.10.2019/4P-6C/

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