

Bail Slip

Petitioner/Appellant/Accused No.2 viz. Dhanislas, S/o.Kamalan and Accused No.1 Viz., Suresh, S/o.Rayappan, were already released on bail vide this Court order dated 18.03.2013 in MP(MD).No.1/2013 in Crl.A.(MD).No.100/2013 and order dated 18.04.2013 in MP(MD).No.1/2013 in Crl.A.(MD).No.130/2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.(MD)Nos.100 and 130 of 2013

CRL.A(MD)No.100 of 2013

Dhanislas

... Appellant/Accused No.2

Vs.

State rep. By,
The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.831 of 2002)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to allow the above criminal appeal and acquit the appellant from the charge and set aside the impugned Judgment dated 20.02.2013 made in S.C.No.208 of 2004 on the file of the Assistant Sessions Court, Padmanabhapuram, wherein the appellant was convicted and sentenced to undergo 10 years Rigorous Imprisonment for the offence under Section 307 IPC and 10 years Rigorous Imprisonment for the offence under Section 506(ii) IPC.

For Appellant : Mr.K.P.Narayanakumar

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side).

CRL.A(MD)No.130 of 2013

Suresh

... Appellant/Accused No.1

Vs.



State rep. By,
The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.831 of 2002)

... Respondent/Complainant

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Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records in S.C.No.208 of 2004 relating to the Judgment dated 20.02.2013 passed by the learned Assistant Sessions Judge, Padmanabhapuram and to set aside the Judgment of conviction on the appellant/accused.

For Appellant : Mr.P.T.Ramesh Raja

For Respondent : M/s.S.Bharathi,
Government Advocate (Crl. Side).

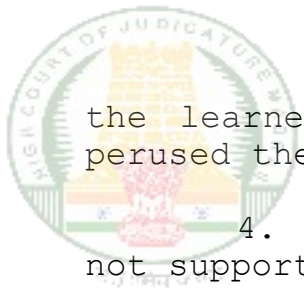
COMMON JUDGMENT

The appellants in these appeals were convicted for the offences under Sections 307 and 506(ii) of I.P.C., and sentenced to undergo 10 years Rigorous Imprisonment for each of the offences.

2. The case of the prosecution is that the first accused Suresh used to eve-tease P.W.1 and that on 27.06.2002, at about 04.00 p.m., he attempted to molest her and also stabbed her with a knife. The appellants were also said to have threatened the other girl students who were standing in the vicinity. In this regard, P.W.1 lodged a complaint(Ex.P.1) before Thukalay police station. Ex.P.3 First Information Report in Crime No.831 of 2002 was registered for the offence under Section 4 of the Tamil Nadu Prohibition of Eve-teasing Act 1998 and Sections 506(ii) and 307 of I.P.C. Investigation was taken up and final report came to be laid against the appellants before the learned Judicial Magistrate, Padmanabhapuram. Cognizance of the aforesaid offences was taken and the case was committed to the Sessions Court in P.R.C.No.40 of 2003 before the Assistant Sessions Judge, Badmanabhapuram, in S.C.No.208 of 2004. Against the first accused, charges were framed under Sections 307 and 506(ii) of I.P.C., and Section 4 of the Eve-Teasing Act. Against the second accused, charges were framed under Sections 307 and 506(ii) of I.P.C. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as five witnesses and marked Ex.P.1 to Ex.P.5. On the side of the accused, no evidence was adduced. The learned trial Judge by the impugned Judgment dated 20.02.2013, convicted and sentenced the appellants as mentioned above. Questioning the same, the first accused has filed Crl.A.(MD) No.130 of 2013, while the second accused has filed Crl.A.(MD)No.100 of 2013.

3. Heard the learned counsel appearing for the appellants and

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the learned Government Advocate appearing for the respondent and perused the evidence on record.

4. It is true that the defacto complainant/victim girl did not support the prosecution case and that she turned hostile.

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5. The learned counsel appearing for the appellants would also point out that even though the names of two other college students have been mentioned, they were not examined as witnesses. The appellants' counsel also highlighted the inherent improbability in the prosecution case. The appellants were said to have been armed with deadly weapon. But then, P.W.1 did not suffer any injury. They also pointed out that the watchman of the college, namely, P.W.2 and P.W.3 who were in their 50s claimed to have overpowered to the accused who were in their 20s and brought them to the police station. The weapon said to have been brandished by the appellants at the time of the occurrence was not marked. The appellants' counsel would submit that the Court below erred in finding them guilty of the offences under Sections 307 and 506(ii) of I.P.C.

6. Per contra the learned Government Advocate(Crl. Side) submitted that the impugned Judgment does not warrant any interference and that the appeals may be dismissed.

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

8. Both the appellants were arrested on the date of occurrence itself (i.e.) on 27.06.2002. It is not as if P.W.2 and P.W.3 took the appellants to the police station. In fact both these witnesses have categorically stated that they merely held the appellants and that the police came to the spot and it was only the police who took the appellants to the police station. P.W.1 turned hostile. P.W.1 was a student of N.I. Engineering College during the relevant time. By the time, she was examined, she was not a student of the college. This Court can therefore understand the state of mind of a college going girl student who was a victim of eve-teasing. P.W.1 admitted her signature in Ex.P.1 complaint. The case of the prosecution has been supported by P.W.2 and P.W.3 who were the Security Personnel working in the college in question.

9. Now what arises for consideration is to what extent the prosecution case can be believed. I am in full agreement with the appellants' counsel that the appellants did not attempt to cause injury to the victim by brandishing a knife. Admittedly P.W.1/victim girl did not suffer any injury. I am of the view that eve-teasing incident has been blown out of proportion so as to implicate the appellants herein. The appellants have suggested that they had been falsely implicated. They would also claim that there



formal suggestion nothing further has been culled out. The appellants have not come out with any defence version in the examination under Section 313 of Cr.P.C.

10. As rightly pointed by the learned Government Advocate (Crl.Side), a two wheeler was seized from the spot and the same was subsequently returned to accused No.2 as he filed an application under Section 451 of Cr.P.C. From these aspects, namely, arrest of the appellants on the date of occurrence, admission of the signature of P.W.1 in Ex.P.1 complaint, handing over of the two wheeler mentioned in the complaint to accused No.2 on filing of the application under Section 451 of Cr.P.C., and the testimony of P.W.2 and P.W.3, I am convinced that the appellants herein have indulged in an act of eve-teasing. But then, the evidence of P.W.2 and P.W.3 does not inspire my confidence.

11. Therefore, the impugned Judgment convicting and sentencing the appellants for the offences under Sections 307 and 506(ii) of I.P.C., is set aside. The appellants are acquitted of the offences for which they were found guilty. Having regard to the evidence on record, the learned counsel appearing for both the appellants would submit that they would not challenge the finding of guilt under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. But then, the appellants' counsel submitted that this Court ought not to send the appellants to prison because they were already in prison for almost 84 days. It is further seen that for the last 17 years, the appellants have not come under the adverse notice of the police. They do not have any other bad antecedent. Taking note of the mitigating factors, even while setting aside the conviction of the appellants for the offences under Sections 307 and 506(ii) of I.P.C., they are found guilty of the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. But then, the sentence of imprisonment shall be reduced to the period already undergone.

12. The Criminal Appeals stand partly allowed, accordingly. The bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu



To:

1. The Assistant Sessions Judge,
Padmanabhapuram.
2. The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, Criminal Section, (2 Copies)
Madras High Court-Madurai Bench,
Madurai.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-80929[F] dated
09/08/2019)

+1cc to Mr.P.T.Ramesh Raja, Advocate, SR.No.80358

Crl.A.(MD)Nos.100 and 130 of 2013
07.08.2019

JMN(19.02.2020) 5P : 8C