

**Bail Slip**

V.Giri alias Ashok Kumar, Mele aged 33 S/o.Venkatachalam, Sole Accused was released on bail of this Court order dated 23/08/2017, made in CrI.M.P.(MD)6506 of 2017 in CrI A.(MD).No. 271 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**AND****THE HONOURABLE MR.JUSTICE B.PUGALENDHI****Criminal Appeal (MD)No.271 of 2017**

V.Giri alias Ashok Kumar ... Appellant/ Sole Accused

Vs.

The State,
represented by
The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.
[Cr.No.339 of 2013]

... Respondent/Complainant

Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the Mahila Court (Fast Mahila Court)/Sessions Judge, Thanjavur, in S.C.No.302 of 2015, dated 31.01.2017.

For Appellant : Mr.E.Somasundaram

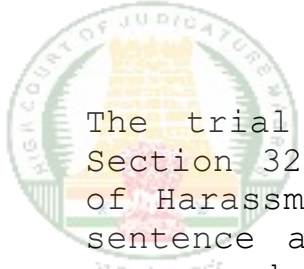
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

* * * * *

JUDGMENT(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.**)

The sole accused in S.C.No.302 of 2015 on the file of the Mahila Court (Fast Mahila Court)/Sessions Judge, Thanjavur, is the appellant and he was prosecuted for the commission of the offences under Sections 294(b), 326, 307 I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. The trial Court has convicted and sentenced the appellant/accused as follows:

Conviction	Sentence
U/s. 294(b) I.P.C.,	To undergo simple imprisonment for three months.
U/s.307 I.P.C.,	To undergo life imprisonment.



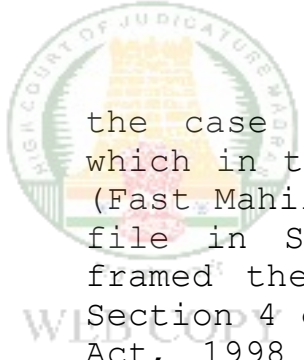
The trial Court also found the appellant/accused guilty under Section 326 I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and in the light of the larger sentence awarded under Section 307 I.P.C., no separate sentence was awarded under Section 326 I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. The appellant/sole accused aggrieved by the said conviction and sentence awarded, has filed this Criminal Appeal.

2. The facts leading to the present appeal, relevant for the purpose of disposal, briefly narrated, are as follows:

2.1. The appellant/accused was employed as a mason and the victim/ P.W.1 was a menial/assistant working under him. On 28.08.2013, P.W.1 was waiting to board the bus at Thiruvaiyaru Bus Stand and at that time, the appellant/accused made an attempt to behave improperly and indecently and when the advances were refused, he abused her and keeping it in mind, on the same day, at about 06.45 p.m., behind Periyar statue near Thiruvaiyaru Bus Stand, while P.W.1 was sharing her daily wages with other witnesses, the appellant/accused armed with aruval, abused her by indecent and immoral words and shouted that she should not be alive and tried to inflict wounds and it was forecast by her and she sustained grievous injury on the right wrist. P.W.1, on sustaining injury, was taken to Government Hospital, Thiruvaiyaru and thereafter, she was taken to Thanjavur Medical College Hospital through the medical assistance of 108 Ambulance and upon receipt of information, P.W.11 - Sub Inspector of Police [then attached to Thiruvaiyaru Police Station], proceeded to the Thanjavur Medical College Hospital on 29.08.2013 and recorded the statement of P.W.1 at 09.00 a.m., on the same day and thereafter, returned to the Police Station at 11.00 a.m., and registered a case in Cr.No.339 of 2013 for the commission of the offences under Sections 294(b), 324, 307 I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. The printed F.I.R. was marked as Ex.P.5. P.W.11 handed over the case papers to P.W.12 - Inspector of Police for investigation.

2.2. P.W.12 upon receipt of the F.I.R., has recorded the statement of P.W.8, who initially treated P.W.1 and also recorded the statements of Ravikumar and Mohanraj and also collected the copy of Accident Register marked as Ex.P.3 and the Medico legal opinion given by the Doctor was marked as Ex.P.4. P.W.12 also prepared Ex.P.2 - Observation Mahazar and Ex.P.6 - Rough Sketch and after completion of the investigation, has filed the final report charging the appellant/accused as stated above on the file of the Court of Judicial Magistrate, Thiruvaiyaru, in P.R.C.No.10 of 2014.

2.3. The Committal Court, upon filing of the final report, issued summons to the appellant/accused and on his appearance, <https://hcservices.intelnet.in/hcservices.htm> the documents under Section 207 of the Code of Criminal Procedure, 1973. The Committal Court having found that the case is exclusively triable by the Court of Session, committed



the case to the Court of Principal District Judge, Thanjavur, which in turn, made over the case to the file of the Mahila Court (Fast Mahila Court)/Sessions Judge, Thanjavur, who has taken it on file in S.C.No.302 of 2015 and on appearance of the accused, framed the charges under Sections 294(b), 326, 307 I.P.C., and Section 4 of the the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and questioned him. The appellant/accused pleaded not guilty to the charges framed against him and prayed for trial of the case.

2.4. The prosecution in order to sustain their case, examined P.W.1 to P.W.12, marked Exs.P.1 to P.6 and also marked M.O.1.

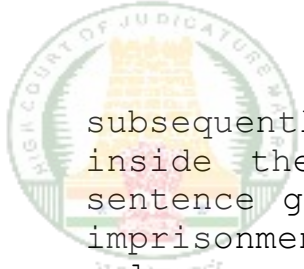
2.5. The appellant/accused was questioned under Section 313 (1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false.

2.6. On behalf of the accused, neither oral nor documentary evidence was let in.

2.7. The trial Court on consideration of the oral and documentary evidence and other materials, found him guilty and convicted and sentenced the appellant/accused as stated above and aggrieved by the same, the appellant/accused has preferred this Criminal Appeal.

3. The learned Counsel for the appellant/accused would submit that the case projected by the prosecuted is full of infirmities and inconsistencies and except Ex.P.1 - F.I.R., all the documents have been belatedly dispatched to the Court only on 14.03.2014 and the huge delay in dispatching the material documents has not also been explained by the prosecution. The testimonies of the other eyewitnesses cannot be believed for the reason that they were co-workers and they were interested witnesses and no attempt has been made to examine any independent witnesses, though the offence is said to have been committed in a public place. As per the testimony of the Doctor, who treated P.W.1, aruval is said to have been used by the appellant/accused and the possibility of injuries may also be on account of the instruments used by the masons and in the absence of recovery of weapon, aruval which is said to have been used by the appellant/accused, cannot be said that he committed the grievous offence. P.W.1 has also got an axe to grind for the reason that originally, she worked as a menial under the appellant/accused and later on, left the job and therefore, lodged a false complaint. Since the case of the prosecution bristles with very many inconsistencies and infirmities, the trial Court, in any event, ought to have awarded the benefit of doubt and acquitted the appellant/accused.

<https://hcservices.ecourts.gov.in/Admission> 4. Subsequently, it is pleaded by the learned Counsel for the appellant/accused that initially, the appellant/accused was not arrested, may be on account of his absconding and



subsequently, he was secured and throughout the trial, he was inside the jail and after conviction, till the suspension of sentence granted by this Court, he underwent nearly 28 months of imprisonment and taking into consideration the fact that he is only a mason and also a semiliterate, this Court may show some leniency in modifying the conviction and sentence imposed on the appellant/accused.

5. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the testimony of the injured witness, namely, P.W.1 has amply been corroborated by the other eyewitnesses, namely, P.W.2 to P.W.5 and despite the fact that P.W.9 and P.W.10 have turned hostile. The prosecution had sustained its case through the scientific evidence also. It is also the submission of the learned Additional Public Prosecutor that P.W.1 was admitted as an inpatient for nearly three months for the injury sustained by her on the vital part, viz., right hand wrist and considering the nature of the job, she was performing, she was deprived of her livelihood and the behaviour of the appellant/accused was also highly immoral and indecent and taking into consideration the cumulative circumstances, the trial Court has rightly convicted and sentenced him to undergo simple imprisonment for three months for the offence under Section 294(b) I.P.C., and to undergo life imprisonment for the offence under Section 307 I.P.C., and hence, prays for the dismissal of this appeal.

6. This Court has carefully considered the rival submissions and also perused the materials available on record.

7. The questions that arise for consideration are, whether the prosecution was able to prove the case beyond any reasonable doubt and whether the appellant/accused is entitled for acquittal?

8. It is to be noted at this juncture that P.W.1 is the injured witness and the appellant/accused made attempts to sexually exploit her despite knowing the fact that she is a married woman living away from the company of her husband and the said advance was refused by P.W.1 and the appellant/accused being infuriated by the same, on the early morning hours, misbehaved with her and angered by her refusal to feed his lust, at about 06.45 p.m., on 28.08.2013, attacked her with lethal weapon, namely, aruval and she sustained grievous injuries. P.W.1 was initially taken to the Government Hospital, Thiruvaiyaru and later on, she was shifted to Thanjavur Medical College Hospital, Thanjavur, through 108 Ambulance and upon receipt of intimation, P.W.11 - Sub Inspector of Police went to the Hospital and recorded her statement and based on the same, registered the F.I.R., marked as Ex.P.5. The testimony of the injured witness was also amply corroborated by her co-workers, namely, P.W.2 to P.W.5.



9. The primordial submission made by the learned Counsel for the appellant/accused is that since P.W.1 was an interested witness, her evidence should have been corroborated by examining independent witnesses since the offence is said to have been committed in a full public view. The said point urged by the learned Counsel for the appellant/accused is liable to be rejected for the reason that the testimony of the injured witness normally would have a great weightage and in the case on hand, it was amply corroborated through the testimonies of other eyewitnesses who have no axe to grind against the appellant/accused who was also in the same occupation. The testimonies of P.W.7 and P.W.8 would disclose that P.W.1 had sustained serious injuries on the right hand wrist and she was admitted as an inpatient for a few months. No doubt, the statements recorded during the investigation and other materials have been belatedly dispatched to the Court on 14.03.2014, though the F.I.R was registered on 29.08.2013 at about 11.00 hours. Since it was an eyewitness account and the testimony of P.W.1 was in consonance with the statement of P.W.1 recorded by the Doctor while she was undergoing treatment, there was no possibility of interpolation or improvement and as such, the belated dispatch of the statements and other materials to the Court would not be fatal to the case of the prosecution. Ex.P.1 - statement of P.W.1 and Ex.P.5 - F.I.R did reach the jurisdictional Court without any loss of time.

10. A faint attempt was made by the learned Counsel for the appellant/accused by submitting that no Test Identification Parade was conducted. However, it is to be noted at this juncture that the appellant/accused and the eyewitnesses were in the same trade or profession and very well known to each other and that apart, the occurrence took place in the morning hours and hence, non-conducting of the Test Identification Parade has not weakened the case of the prosecution. The prosecution has also offered an explanation as to the non-recovery of the weapon that immediately after the occurrence, the appellant/accused fled away from the scene of occurrence and has been absconding for some time and therefore, the weapon was not recovered. The scientific evidence would also point out that P.W.1 sustained injuries on account of an attack with a brutal weapon by the appellant/accused. Therefore, the prosecution was able to prove the case beyond any reasonable doubt.

11. Now, coming to the alternate plea made by the learned Counsel for the appellant/accused, the same was considered by the learned Additional Public Prosecutor appearing for the State that after his surrender, he was never let on bail and faced the trial by remaining incarceration and also after pronouncement of sentence on 01.12.2017. This Court after entertaining this appeal, has suspended the substantive sentence of imprisonment on 23.08.2017 and the appellant/accused had already undergone the



imprisonment for nearly 28 months. The injury was also on the non-vital part, but, however on the sensitive part of right hand wrist.

12. Though some of the witnesses deposed that the appellant/accused uttered the words that he will finish off P.W.1, the testimony of the Investigating Officer would reveal that the said witnesses made improvements from that of the statements recorded during the course of investigation and therefore, it was not the intention on the part of the appellant/accused to cause death by using lethal weapon and as such, it cannot be said that the intention of the appellant/accused was to cause the death of P.W.1. However, P.W.1/victim sustained grievous injuries. The appellant/accused was also under incarceration for a very considerable period, i.e., nearly 28 months and it is also brought to the knowledge of this Court that his family is also suffering during his incarceration. The conduct of the appellant/accused during incarceration is also good and he did not come to the adverse notice of indulging in violation of Prison Rules, as per the submission of the learned Additional Public Prosecutor, on instructions.

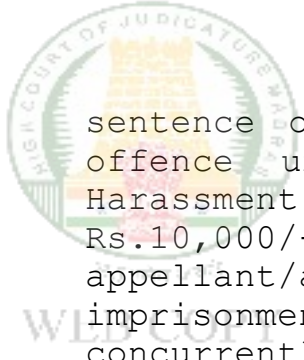
13. Incarceration is also one of the methods to reform a criminal and therefore, this Court is of the opinion that the conviction and sentence awarded by the trial Court require modification.

14. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused under Section 307 I.P.C., is modified and he is convicted for the commission of the offence under Section 326 I.P.C., and sentenced to undergo rigorous imprisonment for four years. The conviction and sentence imposed on the appellant/accused for the commission of the offence under Section 294(b) I.P.C., is sustained. Further, the conviction imposed on the appellant/accused under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, is also sustained. However, the trial Court did not award any separate sentence for the said offence. The punishment for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, is as follows:

"4. Penalty for harassment of woman.- Whoever

commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees."

Since alteration of sentence is passed in this appeal, no separate



sentence of imprisonment is required for the commission of the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. However, a fine of Rs.10,000/- (Rupees Ten Thousand only) is imposed on the appellant/accused with a default sentence of one month simple imprisonment. The sentences of imprisonment are ordered to run concurrently. The appellant/accused is also granted set off under Section 428 Cr.P.C., for the period of incarceration undergone by him during trial and pendency of the appeal. If the appellant/accused is on bail pursuant to the order granting suspension of substantive sentence of imprisonment, vide order dated 23.08.2017, he shall be taken into custody for serving the remaining period of sentence of imprisonment and if he is entitled for remission, the same may also be taken into consideration as per law.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Mahila Court (Fast Mahila Court)/Sessions Judge,
Mahalir Court, Thanjavur.
- 2.The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD)No.271 of 2017
14.06.2019

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