



Bail Slip

The Appellant/Accused namely Vijayakumar, aged about 35 years S/o.Perumal Nadar was directed to be released on bail as per order of this Court dated 17.04.2014 and made in MP(MD)No.2 of 2014 in Crl.R.C. (MD)No.190 of 2014 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.11.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.R.C. (MD)No.190 of 2014

Vijayakumar .. Petitioner/Appellant/Accused
Vs.

State rep. by
Inspector of Police,
Nazareth Police Station,
Thoothukudi District.
Crime No.280 of 2010 .. Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 read with 401 of the Criminal Procedure Code to call for the records relating to the order passed in C.A.No.3 of 2012, dated 05.03.2012, by the learned Additional Sessions Judge, Fast Track Court No.2, Tuticorin, by modifying the conviction and sentence passed on 05.12.2011 in C.C.No.195 of 2010 by the learned Judicial Magistrate, Sathankulam on the following among other.

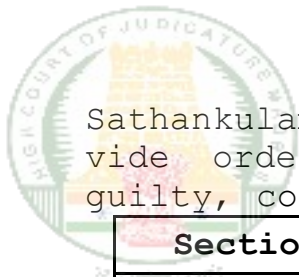
For Petitioner : Mr.T.Senthilkumar
For Respondent : Ms.S.Bharathi
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Revision Case is filed by the petitioner / accused, as against the order dated 05.03.2012, passed by the learned Additional Sessions Judge, Fast Track Court No.2, Tuticorin, in C.A.No.3 of 2012, modifying the conviction and sentence imposed by the learned Judicial Magistrate, Sathankulam, in C.C.No.195 of 2010, dated 05.12.2011.

2. The petitioner / accused was tried for the offence under Sections 452, 323 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, before the learned Judicial Magistrate,

<https://hcservices.ecourts.gov.in/hcservices/>



Sathankulam, in C.C.No.195 of 2010 and the learned Magistrate, vide order dated 05.12.2011, found the petitioner / accused guilty, convicted and sentenced him as follows:

Section of Law	Period of Imprisonment
452 IPC	To undergo simple imprisonment for six months and to pay a fine of Rs.1000/-, i/d to undergo simple imprisonment for one month.
323 IPC	To pay a fine of Rs.1000/-, i/d to undergo simple imprisonment for one month.
4 of Tamil Nadu Prohibition of Women Harassment Act	To undergo simple imprisonment for six months and to pay a fine of Rs.10,000/-, i/d to undergo simple imprisonment for one month.

3. As against the conviction and sentence imposed by the trial Court, the petitioner / accused preferred an appeal before the Court of Sessions and the same was taken on file by the learned Additional Sessions Judge, Fast Track Court No.2, Tuticorin, in C.A.No.3 of 2012 and by judgment dated 05.03.2012, the first appellate Court has set aside the punishment imposed under Section 323 IPC and modified the sentence as against the other two Sections as follows:

Section of Law	Period of Imprisonment
452 IPC	To undergo rigorous imprisonment for one month and to pay a fine of Rs.1000/-, i/d to undergo simple imprisonment for one month.
4 of Tamil Nadu Prohibition of Women Harassment Act	To undergo rigorous imprisonment for one month and to pay a fine of Rs.10,000/-, i/d to undergo simple imprisonment for one month.

4. Aggrieved over the conviction and sentence imposed by the appellate Court, the petitioner / accused has preferred the instant revision case.

5. The brief facts of the case are as follows:

5.1. According to the prosecution, the victim / PW1 is the wife of PW2. PW2 and the accused are brothers. There are totally four brothers and their father has partitioned a property equally among his sons. There was a dispute between PW2's family and the accused's family with regard to the share of the property and they were not in speaking terms for nearly seven years. There was a dispute prevailed between them in sharing of water also as well as



in cultivating the lands belonging to the share of the 4th brother, namely, Rajan. It is alleged that the said Rajan, though initially allowed PW2 to look after his lands, has later switched his side and therefore, the enmity persisted.

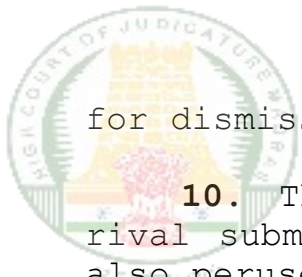
5.2. On the date of occurrence, ie., on 08.09.2010, at about 08.45 am, PW1 raised objections with regard to the damage caused to the irrigation pipes and out of that, the accused entered into the house of PW1, assaulted her, dragged and kicked her out in the street. On account of the same, PW1 sustained simple injury on the head and also a complaint of pain on her shoulders. After the arrival of PW2, a complaint was lodged at about 03.00 pm, before the respondent Police and based on the same, a case was registered in Crime No.130 of 2010 for the offence under Sections 294(b), 448 IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. After investigation, the respondent Police filed the final report and in conclusion of the trial, the trial Court convicted the petitioner / accused as stated supra.

6. Heard Mr.T.Senthilkumar, learned Counsel appearing for the petitioner / accused and Ms.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent Police.

7. Mr.T.Senthilkumar, learned Counsel for the petitioner / accused submitted that there is a dispute among the family members and since Rajan [4th brother], who is an unmarried one, was living with the accused, PW1 abused the accused's wife by linking with him. Therefore, the petitioner / accused got infuriated and scolded the victim. But, it is not that the petitioner / accused dragged the victim to the street and kicked her.

8. The learned Counsel for the petitioner further pointed out that the conduct of the victim / PW1 in reporting the incident to the Police belatedly is a vital point to be considered. The Witness Nos.3, 4, 5, 7 and 10 have turned hostile and apart from the evidence of the victim / PW1, there is no other direct evidence to corroborate the evidence of PW1 and therefore, prays for interference.

9. Per contra, Ms.S.Bharathi, learned Government Advocate (Crl. Side) would submit that though PW4 was treated as hostile, she has stated to the extent that she found PW1 lying on the road with injury and also that the victim / PW1 has told her that it was this accused, who assaulted her on the date of occurrence. In fact, the evidence of PW1 is corroborated by the evidence of the Doctor [PW8] that the victim / PW1 has sustained the head injury on the date of occurrence, as stated by the prosecution. Considering the available materials, both the Courts below have convicted the petitioner / accused and therefore, prays



for dismissal of this revision case.

10. This Court has paid it's anxious consideration to the rival submissions made by the learned Counsel on either side and also perused the documents placed on record.

11. According to the prosecution, the accused is said to have pushed the victim on the wall and accordingly, she sustained injury. Considering the nature of injuries and the witnesses, the appellate Court acquitted the petitioner / accused under Section 323 IPC, however, confirmed the conviction under Section 452 IPC and 4 of Tamil Nadu Prohibition of Women Harassment Act and modified the sentence as stated supra.

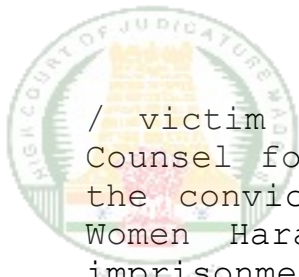
12. The petitioner / accused as well as the victim / PW1 are close relatives. The victim is none other than the wife of the accused's brother [PW2]. Therefore, entering into the house of a close relative, by itself, cannot be termed that he has trespassed into the house with criminal intent. Therefore, in the opinion of this Court, the conviction under Section 452 IPC would not stand.

13. But, PW1 was assaulted by the accused on the date of occurrence and the same has been corroborated by the evidence of the Doctor [PW8] as well as the evidence of PW4, regardless of the fact that no weapon was used / recovered in this case. Therefore, the conviction imposed under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, in the minds of this Court does not require any interference, as such, the same stands confirmed.

14. At this juncture, the learned Counsel for the petitioner / accused, intervened and submitted that the occurrence took place ten years back and over the period, there is no sorry incident and all are living peacefully. Therefore, the conviction should not trigger difference of opinion again. Moreover, the accused is having three children, aged about 15, 13 & 11 years, respectively and he is the only breadwinner of the family and if he is sent to prison, the entire family would be put into distress. Therefore, the learned Counsel sought for some indulgence.

15. Even according to PW1, she only triggered the commission of offence by questioning the accused and by fixing the responsibility on him for the damaged pipelines. That apart, a suggestion has also been made to PW1 that the unmarried brother was living with the accused and that she has made certain abusive linking statements against the wife of the accused.

16. Considering the fact that the dispute is among the family members and since the incident was triggered at the instance of PW1



/ victim and taking into account the plea made by the learned Counsel for the petitioner / accused, this Court, while affirming the conviction under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, modifies the sentence to the period of imprisonment already undergone by the petitioner / accused. However, the petitioner / accused is directed to pay a fine of Rs.15,000/-, in addition to the fine amount of Rs.10,000/- as ordered by the trial Court and the default clause, as ordered by the trial Court, stands confirmed.

17. In fine,

- This Criminal Revision Case is partly allowed.
- The conviction and sentence imposed by the learned Additional Sessions Judge, Fast Track Court No.2, Tuticorin, in C.A.No.3 of 2012, dated 05.03.2012, is set aside insofar as Section 452 IPC is concerned and modified to the extent, as indicated supra, insofar as Section 4 of the Tamil Nadu Prohibition of Women Harassment Act is concerned.

Sd/-

Assistant Registrar (AS)

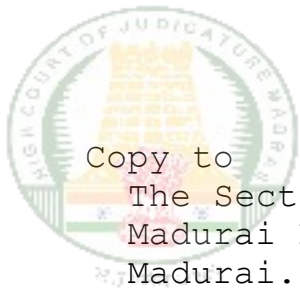
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Sub Assistant Registrar (CS)

gk

To

- 1.The Additional Sessions Judge,
Fast Track Court No.2,
Tuticorin.
- 2.The Judicial Magistrate,
Sathankulam.
- 3.Do Through
The Chief Judicial Magistrate
Tuticorin
- 4.The Inspector of Police,
Nazareth Police Station, Tuticorin
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to
The Section Officer, Criminal Section,-2 copies
Madurai Bench of Madras High Court,
Madurai.

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+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-96874[F] dated
08/11/2019)

Cr1.R.C. (MD)No.190 of 2014
07.11.2019

KM/ (13.12.2019) 6P 9C