

Bail Slip

The Petitioner/Accused viz Manickam @ Manickavasagam was directed to be released on bail as per order of this Court dated 01.10.2013 and made in CrI.Mp.No.1/2013 in CrI A.640/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2020

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Criminal Appeal No. 640 of 2013

Manickam @ Manickavasagam ... Appellant

Vs.

State rep. by
The Inspector of Police,
Mailam Police Station,
Villupuram District.

(Crime No.137 of 2011) ...Respondent

PRAYER: Criminal Original Petition filed under Section 374 of the Code of Criminal Procedure against the judgment dated 11.09.2013 made in S.C.No.136 of 2013 on the file of the II Additional District and Sessions Judge, Tindivanam.

For Appellant : Mr.M.N.Balakrishnan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

J U D G M E N T

The present Criminal Appeal has been filed to set aside the conviction and sentence dated 11.09.2013 passed in S.C.No.136 of 2013 by the learned II Additional District and Sessions Judge, Tindivanam.

2. The appellant is a sole accused. The learned II Additional District and Sessions Judge, Tindivanam, by judgment dated 11.09.2013, convicted the appellant under Section 354

I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, and sentenced to undergo rigorous imprisonment for six months each. Challenging the said conviction and sentence, the accused has come before this Court by way of filing the present Criminal Appeal.

3. The case of the prosecution in brief is as follows:-

P.W.1, Bharathi, is a native of Sozhia Sorgunam Village. She got married one Thangavel of the same Village. Both of them had two children. The accused Manickam was running a tailoring shop in that village. Four or five months prior to the giving of the complaint, P.W.1 went to the tailoring shop run by the accused. During such time, the appellant herein pulled her hand, as there was nobody available in the shop. Immediately, she shouted, due to which the accused raised volume of the tape recorder and threatened her not to reveal anything about the incident. After one week, while she was in the land, the accused called her for physical relationship. As she shouted, he ran away and this fact is known to P.W.6, Sundaram. On 13.03.2011, she revealed about all the previous incidents to her husband. Immediately after hearing the same, he got angry and sent her out of the home and thereby, P.W.1 went to her parents house, which is situated in the same Village. On 23.03.2011, while she was taking bath in the bathroom, the present appellant again called her for physical relationship as he was residing opposite to that house. P.W.2, Suresh, who is the brother of P.W.1 and P.W.3, Nagalakshmi, who is the sister-in-law of the P.W.1, have known about these occurrences.

4. On 24.03.2011, P.W.1 preferred a complaint under Ex.P1 before P.W.7, Rajasekaran, Sub-Inspector, and thereupon, on receipt of the same, P.W.7, registered a case in Crime No.137 of 2011 under Sections 376, 511 and 506 (ii) I.P.C. r/w 4 of Tamil Nadu Prohibition of Harassment of Woman Act, printed FIR is Ex.P4. Immediately after registration of the case, P.W.7 forwarded the copy of those documents to the Inspector of Police for investigation. Thereafter, on receipt of the copy of the F.I.R., P.W.8, Saravanan, Inspector of Police, proceeded to the spot on 30.03.2011 at 3.30 p.m and in the presence of P.W.4, Subramani and Sathishkumar, he inspected the spot and prepared an Observation Mahazar under Ex.P2 and Rough Sketch which marked as Ex.P5. He examined the witnesses and recorded their statements. On 30.03.2011 at about 7.00 a.m, he arrested the accused at Kooteripattu Junction in the presence of Mohan and Paramasivam and sent him to judicial custody. The signature of both the witnesses were marked Ex.P6 and Ex.P7 respectively.

5. In continuation of the investigation, P.W.8 gave a requisition letter which was marked as Ex.P8 to the Court for sending the accused for medical examination. On the basis of

Ex.P9 order, the accused was taken to the Hospital for medical examination. P.W.5, Doctor Balaji, examined the accused and gave the medical certificate under Ex.P3. P.W.8 examined rest of the witnesses and completed the investigation and filed a final report against the accused under Sections 376 r/w 511 and 506 (ii) I.P.C. r/w 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

6. Based on the above materials, the trial Court framed charges under Sections 376, 511 and 506 (ii) I.P.C. r/w 4 of Tamil Nadu Prohibition of Harassment of Woman Act, and the same were denied by the accused.

7. In order to prove their case, on the side of the prosecution, as many as eight witnesses were examined as P.W.1 to P.W.8 and nine documents were marked as Ex.P1 to Ex.P9.

8. Out of the said witnesses, P.W.1, Bharathi, who is a victim in this case, stated about the occurrence that prior to five months from the date of the complaint, when she was in the tailoring shop of the accused, the appellant herein pulled her hands. When at the time P.W.1 shouted, the appellant raised the volume of the tape recorder. Secondly, after one week from the said occurrence, when P.W.1 was in the land, the accused came there and invited the P.W.1 for physical relationship, the same was witnessed by one Sundaram. After seeing the said occurrence by Sundaram, the appellant herein ran away from the said place and subsequently, on 13.03.2011, P.W.1 intimated the occurrence to her husband. Immediately after hearing the same, the husband of P.W.1 got annoyed and instructed P.W.1 to go out of his house. Even after the same, on 23.03.2011 at night hours, when P.W.1 was taking bath, the appellant herein came and invited her for physical relationship. In respect to the same, on 23.03.2011, P.W.1 preferred a complaint, Ex.B1.

9. P.W.2, Suresh, who is a relative of P.W.1. In the year of 2011, when at the time, P.W.2 is in the house of P.W.1, the husband of the P.W.1 intimated the attempts made by the accused.

10. P.W.3, who is a resident of the same Village. She had also heard the occurrence through his brother Thangavel.

11. P.W.4, who is one of the witnesses to the preparation of observation mahazar and rough sketch.

12. P.W.5, Doctor Balaji, attached to the Thajavur Medical College Hospital, has stated that on 05.05.2011 when he was on duty, the appellant herein has been brought for the potency test. On examination, he find out that the appellant is

having the potency for sexual intercourse.

13. P.W.6, Sundaram, who is alleged to have witnessed the occurrence is not supported the case of prosecution. Hence, he was treated as hostile witness. During the time of cross-examination by the Assistant Public Prosecutor, he has not stated anything in support of the prosecution.

14. P.W.7, Rajasekar, on 24.03.2011, when he was working as Sub-Inspector of Police in Mailam Police Station, received a complaint from P.W.1 and registered a case in Crime No.137 of 2011 under Sections 376 r/w 511 and 506 (ii) I.P.C. r/w 4 of Women Harassment Act. Immediately after registration of the case, he handed over the case records to P.W.8, Saravanan, Inspector of Police in Mailam Police Station. He took the F.I.R. registered in Crime No,137 of 2011 for investigation. On the same day at about 3.30 a.m, he arrested the accused in the presence of Mohan and Paravasivam and recorded the confession given by the accused. He sent a requisition to the Court for examining the accused in respect to the potency of the accused. Consequentially, after receipt of the medical examination report, he completed the investigation and he came to the positive conclusion that the accused herein committed the offence and charged under Section 376 r/w 511 and 506 (ii) I.P.C. r/w 4 of Women Harassment Act.

15. When the above incriminating materials were put into the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not chose to examine any witness and did not mark any document on his side.

16. The learned Additional District and Sessions Judge, after perusing all the above materials and on considering the arguments advanced by either side convicted and sentenced the accused as stated supra. Aggrieved over the conviction and sentence, the appellant is before this Court with the present appeal.

17. The learned counsel for the appellant would contend that the evidence given by the prosecution witnesses are having lot of contradictions, the evidence put forth by P.W. 1 to P.W.8 creates a doubt whether the appellant has committed the offence as alleged by the prosecution. For proving the offence under Section 354 I.P.C., the prosecution must be proved assault or criminal force, which have been used by the appellant in order to outrage the modesty of a woman. Similarly, for proving the offence under Section 4 of Women Harassment Act, the prosecution must prove the harassment committed by the appellant towards P.W.1. But, in this case, no evidence is available on the side of the prosecution to establish the date and time, in which the

alleged occurrence has happened. Accordingly, he prayed to allow the appeal by setting aside the conviction rendered by the trial Court.

18. On the other hand, the learned Additional Public Prosecutor would contend that the evidence given by P.W.1 and P.W.6 to P.W.8 are clearly establish the case of the prosecution as well as the harassment committed by the appellant towards P.W.1. According to him, intervention of this Court is not necessary in the conviction and sentence passed by the trial Court.

19. I have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent police and have also perused the records carefully.

20. Initially, before the trial Court, in order to corroborate the evidence given by the P.W.1., two witnesses have been examined on the side of the prosecution as eye witnesses. In this regard, on going through the evidence given by P.W.2 and P.W.3, who are alleged to be the eye-witness to the occurrence, they have not stated anything alleging that they have seen the occurrence as stated in the prosecution. The evidence given by P.W.2 and P.W.3 are very clear that they have heard the occurrence through the third party. Accordingly, the evidence given by P.W.2 and P.W.3 is not at all useful to consider the case in favour of the prosecution.

21. Secondly, on going through the evidence given by P.W.4, it is made clear that only in his presence, P.W.8 prepared the observation mahazar. In otherwise, the evidence given by P.W.5 proves the fact that the appellant herein is having the potency for sexual relationship.

22. Since the trial Court has come to the conclusion that the appellant committed the offences under Section 354 I.P.C. and Section 4 of Women Harassment Act, for confirming the same, the witnesses examined on the side of the prosecution P.W.2 to P.W.6 is not at all sufficient. In fact, the evidence given by P.W.1 is not at all corroborated through the evidence of P.W.2 to P.W.6. Therefore, the only available evidence in order to support the case of prosecution is the evidence given by the victim, who is P.W.1. On analysing the said evidence with the evidence given by P.W.8, who is the Investigation Officer, there may be some contradictions. The evidence given by P.W.8 is very clear as during the time of investigation, P.W.1 has not stated anything about the date, time and place of occurrence. Further, P.W.1 herein does not say anything about the time, on which she was taking bath. However, in respect of the date and

time of the occurrence, while at the time of giving evidence before the trial Court, P.W.1 stated the time and date, on which the alleged occurrence had happened. In respect of the same, the learned counsel appearing on behalf of the accused did not suggest as the occurrence had not happened as stated by P.W.1., particularly, in respect of the date and time. Therefore, non-denial of the accused before P.W.1 will amount to admission of the case of the prosecution in respect of the date and time. Therefore, non-mentioning the date and time before the Investigation Officer during the time of investigation is not fatal to the case of the prosecution.

23. On the other hand, it is necessary to decide whether the act committed by the accused would amount to outrage the modesty of a woman. In this regard, in the case of Aman Kumar and Anr. Vs. State of Haryana reported in 2004 (4) SCC 379, the Hon'ble Supreme Court has held as follows:-

"The act of pulling a woman, removing her dress coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman, and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object."

24. Now applying the said proposition to the case in hand, in respect of outraging the modesty of P.W.1, only with knowledge and intention in the absence of others, the appellant herein abnormally behaved with P.W.1. Therefore, the finding arrived at under Section 354 of I.P.C. by the trial Court is found to be correct. In respect of the Section 4 of Women Harassment Act, it is necessary for the prosecution, to prove the harassment made by the accused. In this regard, on going through Section 2(a) of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, it was held as follows:-

"2 (a) "harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force."

25. Applying the said definition to the act committed by the appellant herein also, the accused by way of indecent conduct created a fear, shame to the P.W.1.

26. Accordingly, in the light of the above discussions, this Court came to the conclusion that the evidence put forth by the prosecution is clearly established as during the time of

occurrence, the accused/ the appellant with an intention to outrage the modesty of P.W.1, pulled her hand and also made the harassment. Therefore, he has committed the offences under Section 354 of I.P.C. and 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

27. In the said circumstances, in respect to the punishment awarded by the trial Court, the learned counsel appearing for the appellant would submit that the alleged occurrence had happened in the year of 2011. Subsequently, till date, the appellant has not committed any offence, more than that, the appellant and P.W.1 are residing in the same village and therefore, some leniency may be shown to the accused in awarding the punishment.

28. Now on considering the said submission with the relevant records, it is true that after nine years from the date of occurrence, sending the appellant to the prison will develop more enmity between P.W.1 and the appellant. Therefore, I am of the considered opinion that the offences committed by the appellant is to be compensated by directing the appellant to pay a compensation to P.W.1.

29. Now, coming to the conviction and sentence, this Court is of the view that it is appropriate to impose one month punishment for each offence and the same shall run concurrently and the period of detention already undergone by the appellant will be set off under Section 428 of Cr.P.C. Apart from that, the appellant is directed to pay a sum of Rs.15,000/- (Rupees Fifteen thousand only) as a compensation to P.W.1, within a period of one month from the date of receipt of a copy of this order and upon such deposit, the learned trial Judge is directed to return the same to P.W.1.

With the above modification, the Criminal Appeal is disposed of.

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Sd/-

Assistant Registrar

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Sub Assistant Registrar

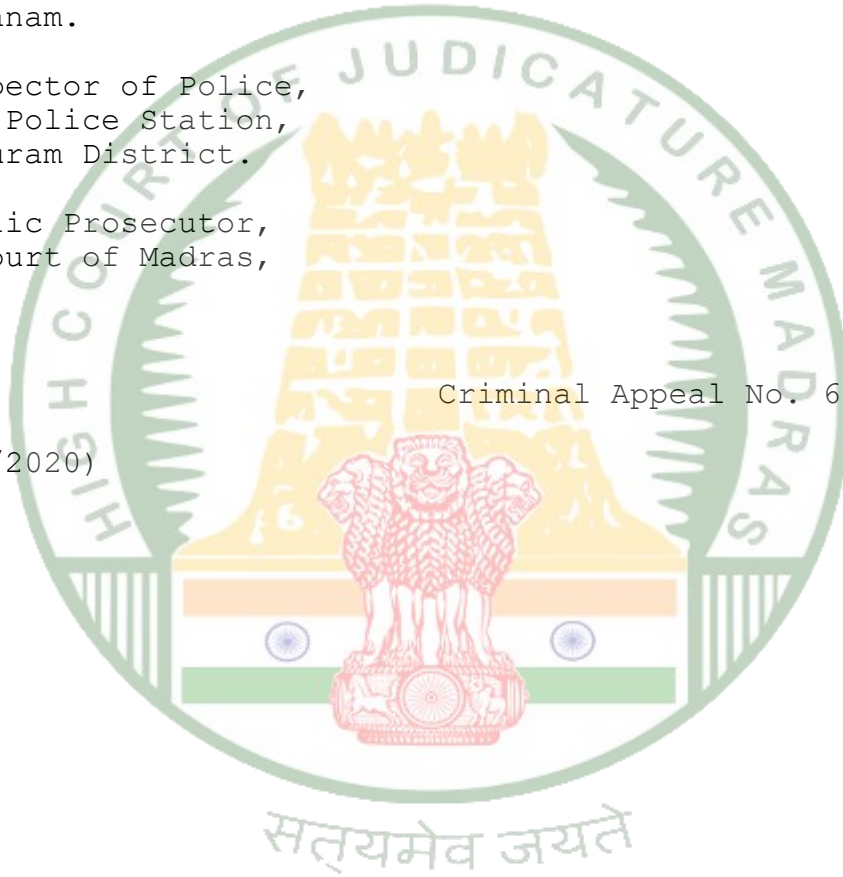
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To

- 1.The Judicial Magistrate,
No.II Tindivanam
- 2.The Chief Judicial Magistrate
Villupuram.
- 3.The II Additional District and Session Judge
Tindivanam.
- 4.The Inspector of Police,
Mailam Police Station,
Villupuram District.
- 5.The Public Prosecutor,
High Court of Madras,
Madras.

Criminal Appeal No. 640 of 2013

MP (CO)
RMP (20/11/2020)



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