



Bail Slip

The Appellants/Accused 1 to 6 viz., 1. Gnanamuthu, S/o.Baskar Nadar, 2. Jebaraj, S/o.Gnanamuthu, 3. Poomani, W/o.Gnanamuthu, 4. Arumugakani, S/o.Deva Kirubaimani, 5. Shanmugathai, W/o.Deva Kirubaimani, 6. Mariyathamangam, W/o.Vijayakumar were enlarged on bail on the file of this Court in MP(MD)No.1 of 2015 in Crl.A(MD)No. 151 of 2015 dated 09.07.2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A(MD)No.151 of 2015

1.Gnanamuthu
2.Jebaraj
3.Poomani
4.Arumugakani
5.Shanmugathai
6.Mariyathamangam

... Appellants / Accused Nos. 1 to 6

Vs.

The State rep. by
The Inspector of Police,
Nalatin Puthur Police Station,
Thoothukudi District
(Crime No.19 of 2010)

... Respondent / Complainant

PRAYER: Petition is filed under Section 374 of Criminal Procedure Code, against the Judgment, dated 25.06.2015 made in S.C.No.98 of 2011, passed by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi,

For Appellant	: Mr.S.Ramasamy
For Respondent	: Ms.S.Bharathi
	Govt.Advocate (crl.side)
	Mr.S.Gokulraj
	(For Assisting Prosecution)

JUDGMENT

The appellants / A1 to A6 along with seven other accused, arrayed as A-1 to A-13, were charged and tried before the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi, in S.C.No.98 of 2011, and after trial, the court below while acquitted A-7 to A-13, however, found the appellants/A-1 to A-



6 guilty and by judgment dated 25.06.2015, convicted and sentenced the appellants as follows:-

S.NO.	OFFENCE	PUNISHMENT
1	Under Section 4(B) of Tamil Nadu Prohibition of Harassment of Women Act, 1998.	10 years Rigorous Imprisonment and fine of Rs.50,000/- each, in default, to undergo Rigorous Imprisonment for 6 months;
2	Under Section 202 r/w 34 of IPC.,	6 months Rigorous Imprisonment
3	Under Section 201 r/w 34 IPC.,	3 years Rigorous Imprisonment and fine of Rs.2000/- each, in default, to under go 6 months Rigorous Imprisonment.

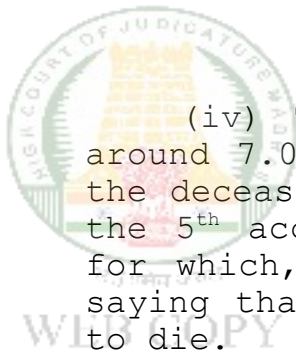
2. For the sake of convenience the appellants and the other accused will be referred to as A-1 to A-13, as arrayed before the trial court.

3. The facts of the case are briefly stated hereunder:-

(i) The 1st and 3rd accused are father and mother of the 2nd accused; 5th accused is the mother of 4th accused and the 6th accused is the elder sister of 4th accused. The Accused Nos.4, 5 and 6 are residing opposite to the house of the deceased Malathi in Vedakovil Street, Kadalaiyoor and the other accused are residing in Kadalaiyoor and the accused are inter-related. On 03.02.2008, the marriage between the deceased Malathi and the 3rd Accused Jebaraj was solemnized, as per the Christian Rites and Customs in Annamalai Nadar Rojappathayammal Thirumana Mandapam in Sivakasi.

(ii) After the marriage, they resided in a separate residence in Vedakovil Street, Kadalaiyoor, as husband and wife, for two years. Out of the wedlock, they were blessed with a male child, by name Francis. Prior to the incident, the 3rd and 4th accused were doing mason work. The 2nd accused, husband of the deceased, did not go to work, was a drunkard, used to join with A4 and continuously consume alcohol. In a drunken mood, he entered into a quarrel with the the deceased, who is the daughter of P.W.1.

(iii) On 07.02.2010, when the deceased went to her parents house in Sivakasi, on that day in the afternoon, the 2nd and 4th accused consumed liquor in the house and the 4th accused had vomited in the house in his shirt. Late in the evening, the 2nd and 4th accused were getting ready to go to Aladipatti in Aruppukottai, at that time, the 4th accused removed his shirt and put it in the house of 2nd accused and wore the shirt of the 2nd accused.



(iv) Thereafter, the deceased / P.W.1's daughter returned at around 7.00 p.m. On the next day ie., on 08.02.2010 at 6.00 a.m. the deceased took the shirt of the 4th accused and went to house of the 5th accused, who is the mother of 4th accused, shouted at her, for which, the 5th and 6th accused, scolded her in filthy language saying that she has slept with 4th accused Arumugakani and told her to die.

(v) The deceased perturbed over the abusive language used by the 5th and 6th accused, went to her house and attempted to commit suicide at 7.00 a.m., however, the deceased was rescued by A1 and A3 and they pacified her. Thereafter, A1 and A3 told the same words and abused the deceased. On 08.02.2012, at about 11.30 a.m., the deceased, being humiliated by the acts of the accused, went to the upstairs portion of her house and committed suicide, by hanging herself. Without informing the death of the deceased to her parents, P.W.1 & P.W.2, the body was burnt by the accused, contrary to Christian Rites and Customs.

(vi) P.W.1 came to know of the entire incident through one Maharajan, and he immediately, went to the Police Station and gave Ex.P1 / written complaint, on the same day ie., on 08.02.2010, before P.W.29 / Inspector of Police. P.W.29, on receipt of the complaint, immediately registered FIR / Ex.P24, took up investigation and he reached the cremation yard at about 17.30 hrs on 09.02.2010 and he inspected the spot and prepared observation mahazar. On 12.02.2010, he arrested the accused and their confessions were recorded. Thereafter, the appellants were brought before the Judicial Magistrate, Kovilpatti and they were remanded to judicial custody. After investigation final report was filed against the accused.

3. The accused were furnished with the relied upon documents u/s 207 Cr.P.C. and the case was committed and the Court below framed charges against the appellants for the offence under Section 4(B) of Tamil Nadu Prohibition of Harassment of Women Act, Section 202 r/w 34 of IPC., and Section 201 r/w 34 IPC. When questioned, the accused pleaded not guilty.

4. In order to prove the case, on the side of the prosecution 30 witnesses were examined as P.Ws.1 to 30 and 29 documents were marked as Exs.P1 to P29, besides 2 Material Objects, viz., M.O.s 1 and 2.

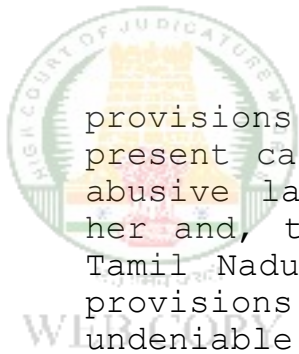
5. The Court below, by pointing out the incriminating materials recorded during the course of trial, questioned the appellants under Section 313(1)(b) of Cr.P.C., and the appellants denied the same as false. On the side of the appellants / accused, neither oral nor any documentary evidence were adduced.



6. The trial Court, on considering the facts and circumstances of the case and also after analyzing the entire oral and documentary evidence, while acquitted A-7 to A-13, however came to the conclusion that the prosecution has proved the case beyond reasonable doubt as against the appellants/A-1 to A-6 convicted and sentenced them as aforesaid, against which the present appeal has been preferred by the appellants.

7. Mr.S.Ramasamy, learned counsel appearing for the appellant would submit that though initially 13 accused were implicated, the trial Court, acquitted A7 to A13, however, convicted A1 to A6. In the present case, though the prosecution examined 30 witnesses, except P.W.1 and 2, who are the father and mother of the deceased, the other witnesses are circumstantial witnesses and official witnesses and their evidence is not much useful to decide the case. Further, P.Ws.1 and 2 statements are contrary in nature and their statements did not constitute the offence in respect of Section 4(B) of Tamil Nadu Prohibition of Harassment of Women Act and as per Section 4(B) of the said Act, soon before her death, the deceased ought to have been subjected to harassment by the concerned person. In the present case, P.W.1 came to know of the entire incident only through one Maharajan, however, the said Maharajan was not examined as prosecution witness and non-examination of the said Maharajan is fatal to the prosecution case. Further, the conviction is based on the interested testimony of P.W.s 1 and 2, who are interested witnesses and related to the deceased and basing the conviction upon their interested testimony is legally unsustainable. It is the further submission of the learned counsel for the appellants that the evidence of P.W.s 1 and 2 in court is an improved version from that of the complaint, Ex.P-1. The improvements done by P.W.s 1 and 2 to the evidence is detrimental to the prosecution case and casts a doubt on the veracity of their testimony. It is the further submission of the learned counsel that even in the said complaint, Ex.P-1, no allegations have been made against any of the accused, but in their testimony before court, very many improvements have been made and, therefore, placing reliance upon the said testimony to convict the appellants is unsustainable and, therefore, prayed for acquittal of the appellants.

8. Per contra, Ms.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent submits that P.W.1 and P.W.2 are father and mother of the deceased; It is the submission of the learned Government Advocate, that though the entire conviction is based on the testimony of P.W.s 1 and 2, yet it is to be remembered that P.W.s 1 and 2 have no axe to grind against the accused. In fact, even according to the prosecution, the marriage between the A-2 and the deceased was an arranged marriage. Therefore, P.W.s 1 and 2 cannot be attributed with any malice, in that they had turned back against A-2 and painted him as the perpetrator of the crime. The evidence of P.W.s 1 and 2 clearly reveals the harassment suffered by the deceased at the hands of the appellants, which attracts, the



provisions of Section 2 (a) of the Women Harassment Act. In the present case, A1 to A6, harassed the deceased, by using filthy and abusive language and outraged her modesty verbally by castigating her and, therefore, the ingredients required under Section 4(B) of Tamil Nadu Prohibition of Harassment of Women Act and other penal provisions stands attracted. The prosecution, through clinching and undeniable evidence has clearly established the culpability of the appellants in the commission of the crime and the trial court, on careful analysis of the evidence before it, has convicted and sentenced the appellants as above and, no interference is warranted with the well considered finding recorded by the trial court.

9. Mr.S.Gokulraj, the learned counsel, who was appointed by this Court on 04.03.2020, for assisting the prosecution, adopted the submissions of the learned Government Advocate (crl.side).

10. I have heard the submissions made on either side and perused the materials available on record.

11. The following questions arise for consideration in the present appeal :-

i) *Whether the ingredients of the offence u/s 4 (B) of the Tamil Nadu Prohibition of Harassment of Women Act stand attracted on the evidence available on record.*

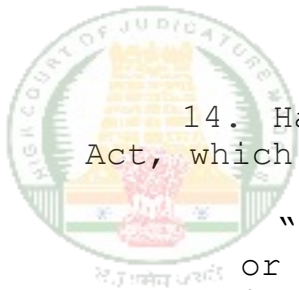
ii) *Whether the evidence of the prosecution witnesses establish the charges u/s 201 r/w 34 IPC and 202 r/w 34 IPC.*

iii) *Whether the conviction and sentence recorded by the trial court deserves to be sustained.*

12. Section 4(B) of Tamil Nadu Prohibition of Harassment of Women Act deals with penalty for harassment of woman and for better clarity, the relevant section is extracted hereunder :-

"Section 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 and with fine which shall not be less than ten thousand rupees."

13. From the above provision of law, it is clear that to constitute an offence of harassment, first of all, there should be harassment and that such harassment should be within the places, as indicated in Section 4 of the Act.



14. Harassment of women is defined under Section 2(a) of the Act, which reads as under :-

"Section 2 (a) : Harassment means any indecent act or 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."

15. The Act is intended to punish the person, who does something in order to outrage the woman's modesty.

16. This Court is ordained with the task to find out whether the evidence of P.Ws.1 and 2 establish the offence u/s 4 (B) of the Tamil Nadu Prohibition of Harassment of Women Act. Section 4(B) of the Act prescribes that soon before death, the deceased should be subjected to harassment by any person. In the present case, P.W.1 came to know the entire incident as also the death of his daughter, through one Maharajan. However, for reasons best known, the said Maharajan has not been examined and without examining the said Maharajan, placing reliance on the information of Maharajan, which is hearsay, the evidence of P.W.1 is not sustainable. Further it is to be pointed out that even it is the case of the prosecution, that at an earlier point of time, when the deceased tried to commit suicide, she was saved by A1 and A3 and this fact has been admitted by P.W1 and P.W.2 in their deposition. Such being the case, no evidence has been placed by the prosecution to prove that the deceased was subjected to harassment just before her death/suicide. Such being the case, this Court is of the considered view that the ingredients, as postulated u/s 4 (B) of Tamil Nadu Prohibition of Harassment of Women Act, does not stand attracted. Therefore, the findings recorded by the court below insofar as the offence u/s 4(B) of the Tamil Nadu Prohibition of Harassment of Women Act is not sustainable, and accordingly, the same is set aside.

17. The appellants have been convicted of an offence u/s 202 r/w 34 IPC. Section 202 IPC deals with intentional omission to give information of offence by a person, who is bound to inform. In the case on hand, P.W.s 1 and 2 are the parents of the deceased. It is the duty of A-1 to A-3, who are in-laws and husband of the deceased to have informed about the death of the deceased to P.W.s 1 and 2. However, after the death of the deceased, by committing suicide, no steps have been taken by the appellants to inform the parents of the deceased, viz., P.W.s 1 and 2 about their daughter's death. Further, the deceased having committed suicide, the said fact has also not been communicated to the law enforcing agency. However, the appellants have proceeded to burn the body of the deceased, contrary to Christian Rites and Customs, which fact has been spoken to by P.W.12 and P.W.13. Therefore, the above acts of the appellants, definitely fall within the provisions of Section 202 r/w 34 IPC. The facts and circumstances of the case clearly attract the offence under Section 202 r/w 34 IPC and the prosecution through the



evidence of P.W.s 1, 2, 12 and 13 have proved that the factum of the offence committed by the appellants u/s 202 r/w 34 IPC and, therefore, this Court is of the considered opinion that the findings recorded by the trial court for the said offence deserves to be sustained.

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18. The appellants have been convicted and sentenced u/s 201 r/w 34 IPC. Section 201 IPC reads as under :-

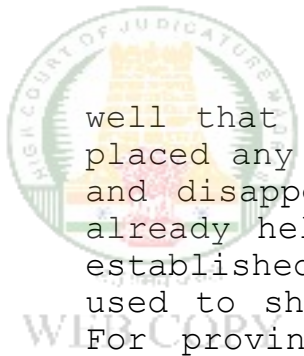
"201. Causing disappearance of evidence of offence, or giving false information to screen offender :-

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false....."

19. From a reading of the above, it is clear that the ingredients that constitutes an offence u/s 201 IPC is that the person committing the offence must be aware that he has committed the offence and further he should cause the evidence of the said offence to disappear with the intention of screening the offender from punishment or with intention gives information, which he knows and believes to be false.

20. From the above it is clear that to establish the offence, a mere suspicion is not sufficient, but there must be cogent and convincing evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and further the accused had acted in a manner to screen the offence or cause disappearance of the evidence, or that he gives any information, which he believes to be false.

21. In the case on hand, true it is that the deceased had committed suicide. The evidence of P.W.s 1 and 2 reveal that there used to be quarrel between the spouses and that the ill-treatment meted out to the deceased had driven the deceased to commit suicide. However, the evidence of P.W.s 1 and 2 only insofar as there used to be quarrel between the spouses could be taken into consideration as the other limb of their evidence is hearsay and they had no personal knowledge of the ill-treatment meted out to the deceased. Even their evidence reveals that the deceased had complained to P.W.s 1 and 2 about the act of her husband in consuming alcohol with A-4. But that cannot be a ground to allege ill-treatment at the hands of the appellants. Further, there is no evidence available on record to show that the appellants have given any information knowing fully



well that the said information is false. The prosecution has not placed any worthwhile evidence to prove the commission of an offence and disappearance of evidence on the part of the appellants. As already held, the intentional omission of the appellants have been established by the prosecution. But that cannot be collaterally used to show that an offence u/s 201 IPC has also been committed. For proving an offence u/s 201 IPC, as stated above, necessary evidence must be let in to prove the act of the accused. Mere inference from certain other evidences would not be suffice to bring home the charge u/s 201 IPC. To put it fine, the prosecution has not placed any materials, be it oral or documentary to conclusively establish the commission of the offence u/s 201 IPC by the appellants. In such view of the matter, this Court is of the considered view that the offence u/s 201 r/w 34 IPC is not sustainable and, accordingly, the same deserves to be set aside.

22. In the result, this Criminal Appeal is allowed in part by confirming the conviction imposed on the appellants u/s 202 r/w 34 IPC, sentencing them to undergo six months Rigorous Imprisonment. However, the conviction and sentence of the appellants u/s 4 (B) of the Tamil Nadu Prohibition of Harassment of Women Act and Section 201 r/w 34 IPC., are set aside. Set-off, as ordered by the trial court u/s 428 Cr.P.C. is maintained. The trial court is directed to take steps to secure the presence of the appellants and commit them to prison to undergo the remaining period of sentence imposed on them.

Sd/-

Assistant Registrar (writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

- 1.The Sessions Judge,
Mahalir Neethimandram
(Fast Track Mahila Court),
Thoothukudi,
2. The Judicial Magistrate No.1,
Kovilpatti.
3. Do thro the Chief Judicial Magistrate,
Tuticorin

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



4. The District Collector,
Tuticorin
5. The Director General of police,
Mylapore, Chennai
6. The Superintendent of Police,
Tuticorin
7. The Superintendent of Central Prison,
Palayamkottai
8. The Superintendent of Central Prison,
(Women Prison), Trichy
9. The Inspector of Police,
Nalatin Puthur Police Station,
Thoothukudi District
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Record Clerk,
Criminal Section, (2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.R.VIJAYAKUMAR, Advocate (SR-10172[F] dated 05/03/2020)
+1 CC to Mr.S.RAMASAMY, Advocate (SR-10275[F] dated 05/03/2020)

JUDGMENT MADE IN
CrI.A(MD)No.151 of 2015
04.03.2020

MK (20.03.2020) 9P 15C