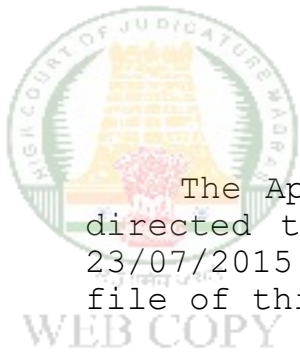




Bail Slip

The Appellant/Sole Accused namely Raja, S/o.Ayyavu Ambalam, was directed to be released on bail as per order of this Court dated 23/07/2015 in MP(MD)No.1 of 2015 in Crl.A.(MD)No.160 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.A(MD)No.160 of 2015

Raja ... Appellant / Accused

Vs.

State rep. by its
Deputy Superintendent of Police,
Thirumangalam Inner Division,
Thirumangalam Town Police Station,
Madurai District.
(Cr.No.783 of 2005)

... Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of Criminal Procedure Code, against the Judgment and Conviction passed by the learned III Additional District and Sessions Court (PCR) Madurai, made in Special S.C.No.48 of 2011, dated 04.07.2015.

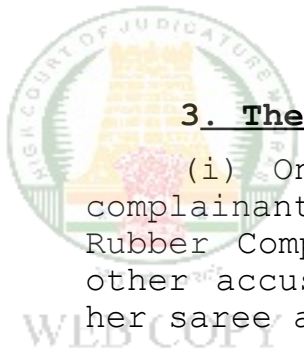
For Appellant : Mr.A.Saravanan

For Respondent : Mr.K.K.Ramakrishnan
Addl.Public Prosecutor

JUDGMENT

The appellant / accused was charged and tried before the learned III Additional District and Sessions Court (PCR) Madurai, made in Special S.C.No.48 of 2011 and after trial, the Court below found the appellant guilty and by Judgment, dated 04.07.2015, convicted the appellant under Section 354 IPC., and sentenced him to undergo 6 months Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo 1 month Simple Imprisonment. Aggrieved over the same, the appellant has filed the present appeal.

2. For the sake of convenience, the parties are referred to, as per their ranking before the trial Court.

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

(i) On 10.05.2005, at about 3.00 p.m., when P.W.1 / defacto complainant, was gracing the goats, at Kappaloor, opposite to SIDCO Rubber Company, at that time, the accused came there, along with other accused, hugged P.W.1, by calling her a cast name and torn her saree and jacket, however, P.W.1 escaped from the accused.

(ii) P.W.1 immediately informed the incident to P.W.2 and P.W.3 / father and brother of P.W.1, who in turn, informed the same to the Village people and Village Headman, for taking action against the accused persons, however, they were not taken any action, hence, P.W.1 lodged Ex.P1 / Complaint before P.W.6 / Sub-Inspector of Police, on 21.05.2005.

4. On receipt of Ex.P1 / Complaint, P.W.6 registered a case in Crime No.783 of 2005, for the offence under Sections 354 and 506(ii) IPC., and Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989, and prepared Ex.P4 / FIR, sent the original FIR to the Court and also sent a copy of Ex.P4 to P.W.7, the Deputy Superintendent of Police.

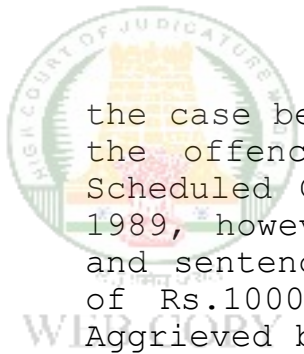
5. P.W.7 / Deputy Superintendent of Police, on receipt of Ex.P4 / FIR, at about 8 p.m., proceeded to the scene of occurrence on 21.05.2013. Again on 22.05.2013, proceeded to the scene of occurrence, prepared Ex.P5 / Observation Mahazar and Ex.P6/ Rough Sketch, in the presence of P.W.4 and P.W.5, recorded the statement of witnesses, arrested the accused and remanded to the Judicial custody. Further, obtained the community certificate of the accused from the Revenue Department. P.W.7, after completion of investigation filed the final report before the concerned court, for the offences aforementioned.

6. Based on the above materials, the Court below framed charges against the appellant for the offence under Sections 354 and 506(ii) IPC., and Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. In order to prove the case, on the side of the prosecution, 7 witnesses were examined as P.Ws.1 to 7 and 7 documents were marked as Exs.P1 to P7. On the side of the appellant / accused, no documents were marked.

8. The Court below by pointing out the incriminating materials recorded during the course of trial, questioned the appellant under Section 313(1)(b) of Cr.P.C., and the appellant denied the same as false.

9. The trial Court on considering the facts and circumstances of the case and also after analyzing the entire oral and documentary evidence, came to the conclusion that the prosecution has not proved

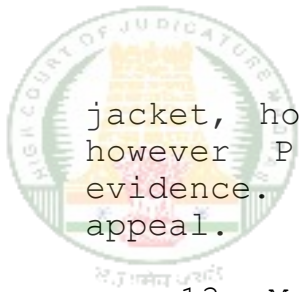


the case beyond reasonable doubts against the accused in respect of the offence under Section 506(ii) IPC., and Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989, however, convicted the accused under Section Section 354 IPC and sentenced to undergo 6 months Rigorous Imprisonment and a fine of Rs.1000/- in default to undergo 1 month Simple Imprisonment. Aggrieved by which, the accused / appellant is before this Court by filing the present appeal.

10. Mr.A.Saravanan, the learned counsel appearing for the appellant would submit that initially, the law enforcing agency registered the case against three accused. Since the appellant / A1 was not appeared before the trial Court, the case against him was split up and other two accused were tried and they were acquitted. However, subsequently, the case against A1 case was conducted by assigning S.C.No.48 of 2011 and the Court below acquitted accused in respect of the offence under Section Section 506(ii) IPC., and Section 3(1)(x) of Scheduled Caste / Scheduled Tribes (Prevention of Atrocities) Act, 1989, however, convicted the accused under Section Section 354 IPC and sentenced him to undergo 6 months Rigorous Imprisonment with default clause. It is submitted by the learned counsel for the appellant that when the co-accused viz., A2 and A3 had been acquitted by the Court below, the same benefit ought to have been given to the present appellant.

11. Adding further, the learned counsel would submit that the incident was happened on 10.05.2005, however, the complaint was lodged only on 21.05.2005 and there is no proper explanation for delay in filing the FIR. In the present case, P.W.1 is the victim, P.W.2 and P.W.3 are father and brother of P.W.1. P.W.1 informed the incident to P.W.2 and P.W.3, who are not eyewitnesses to the occurrence and their evidences are not much useful to decide the present case. Further, P.W.2 in his evidence clearly deposed that the incident was happened on 10.05.2005, the same was immediately informed to the Village people and Village Headman, they assured to enquire the issue and since they were not conducted proper enquiry, P.W.2 lodged the Complaint, on 21.05.2005.

12. It is the further contention of the learned counsel appearing for the appellant that though P.W.7 / Investigating Officer in his evidence deposed that he examined the village people, no evidence was adduced before the trial Court that there was initial complaint before the Village President. In the present case, the victim alone gracing the goats in Government Poramboke land and previously, there was a dispute with regard to removal of fire wood in that particular place. In order to wreck vengeance, the false complaint has been filed against the appellant. The allegation against the accused is that when P.W.1 / defacto complainant, was gracing the goats, at Kappaloor, opposite to SIDCO Rubber Company, at that time, the accused came there, along with other accused, having secured P.W.1's services by calling her a cast name and torn her saree and



jacket, however, P.W.1 pushed the accused and escaped from there, however P.W.1 evidence is not corroborated with any material evidence. Accordingly, the learned counsel prayed for allowing the appeal.

13. Mr.K.K.Ramakrishnan, the learned counsel appearing for the State would submit merely because some of the accused were acquitted for want of evidence, the accused against whom there is legal evidence can be convicted and the easy course of acquittal cannot be adopted by the Court on the ground that the co-accused were acquitted. In this case, P.W.1 had made a specific allegation against A1, as if he hugged her, however, in respect of other accused, there is no serious allegations against them. In the present case, the necessary ingredients required under Section 354 IPC., has been clearly established by the prosecution by examining P.W.1. Accordingly, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

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

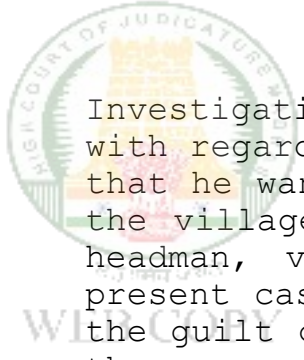
15. The following questions arise for consideration in the present appeal :-

(i) Whether the prosecution established the case against the accused in respect of an offence under Section 354 IPC. ?

(ii) Whether the appellant attempt to misbehave or sexually assault P.W.1 intending to outrage her modesty?

(iii) Whether the order of the trial Court is to be interfered with?

16. On perusal of records it is seen that the entire case revolves between the evidences of P.W.1 / Victim and P.W.7 / Investigating Officer. The other evidences are hearsay evidences. P.W.1 in her evidence deposed that when she was gracing the goats, at Kappaloor, opposite to SIDCO Rubber Company, at that time, the accused came there, along with other accused, hugged and by calling her a cast name torn her saree and jacket, however, P.W.1 pushed the accused and escaped from the place and immediately thereafter, she informed the same to P.W.2 and P.W.3. After two days of the occurrence, the accused came with aruval to her house, threatened her and after 10 days, she lodged the complaint before the respondent police. On perusal of evidence of P.W.2, who is hearsay witness, in his evidence clearly deposed that immediately after the incident P.W.1 informed the same to P.W.2 and P.W.4, P.W.2 informed the same to the Village Headman and the Village Headman assured him to take action, however, at that time, P.W.2 did not reveal with regard to threatening by accused. There may be justification in the action of P.W.2 for not lodging the complaint immediately after the occurrence, however, P.W.7, who is the



Investigating Officer, in his cross examination clearly deposed that with regard to delay in lodging the complaint, P.W.2 informed P.W.7 that he wanted to compromise the issue in the presence of elders of the village. To that effect, P.W.7 did not examine the Village headman, villagers and they were not added as witnesses in the present case. Hence, P.W.1 is evidence is not sufficient to prove the guilt of the accused. In the considered opinion of this Court, the prosecution has miserably failed to examine the independent witnesses and to prove the case against the appellant beyond reasonable doubt.

17. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant / accused in Special S.C.No.48 of 2011, by the learned III Additional District and Sessions Court (PCR) Madurai, dated 04.07.2015, is set aside and the appellant is acquitted of the charges framed against him. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

To

1.The III Additional District and Sessions Court (PCR)
Madurai.

2. The Principal District & sessions Judge, Madurai.

3. The Deputy Superintendent of Police,
Thirumangalam Inner Division,
Thirumangalam Town Police Station,
Madurai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

5.The Record Clerk, Criminal Section (Records)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.SARAVANAN, Advocate (SR-10490[F] dated 06/03/2020)

AKM/18.05.2020/5P-7C/

Crl.A(MD)No.160 of 2015
06.03.2020