

**BAIL SLIP**

Gouthu Mohideen, S/o. Gazali Mohideen aged about (22 years) (Sole Accused) was released on bail (Not in Jail) vide court order dated 26.06.2015 made in MP(MD)No.1/2015 in CRL RC(MD)No.221/2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                     |            |
|---------------------|------------|
| Date of Reservation | 17.02.2020 |
| Date of Judgment    | 12.06.2020 |

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

**Cr1.RC(MD)No.221 of 2015**

Gouthu Mohideen : Petitioner/Appellant/Sole Accused

Vs.

State through  
Sub Inspector of Police,  
Thachanallur Police Station,  
Thachanallur, Tirunelveli.  
(Crime No.884 of 2012)

: Respondent/Respondent/Complainant

**Prayer:** Criminal Revision filed under section 397 and 401 of the Code of Criminal Procedure against the judgment passed by the IV Additional District and Sessions Judge, Tirunelveli, in C.A No.31 of 2014, dated 24.03.2015, confirming the judgment passed by the Additional Mahila Court, Tirunelveli, in C.C No.07 of 2013, dated 17.03.2014.

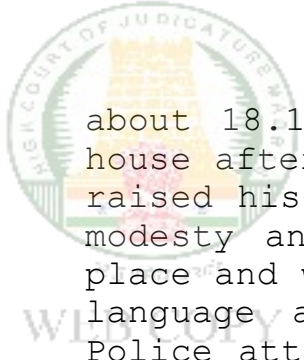
For Petitioner : Mr.S.Selvakumar

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu  
Government Advocate (Criminal side)

**J U D G M E N T**

This criminal appeal is directed against the judgment passed by the IV Additional District and Sessions Judge, Tirunelveli, in C.A No.31 of 2014, dated 24.03.2015, confirming the judgment passed by the Additional Mahila Court, Tirunelveli, in C.C No.07 of 2013, dated 17.03.2014.

2.The case of the prosecution is that on 30.10.2012 at



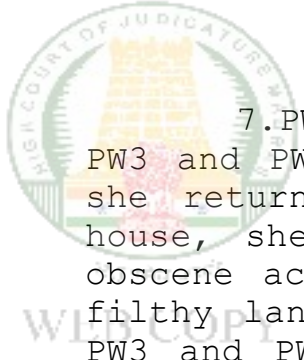
about 18.15 hours, when the witness Hajira Banu returned to her house after pouring waste water opposite to her house, the accused raised his Lungi and by doing obscene act, caused disgrace to her modesty and mental agony to the said Hajira Banu in the public place and when she questioned the accused, he abused her in filthy language and criminally intimidated her. The Sub Inspector of Police attached to Thatchanallur Police Station has filed a final report against the accused examining the witnesses.

3.The trial court, after careful perusal of the entire materials available on record, both oral and documentary found the petitioner/sole accused guilty and convicted for the offence under section 4 of TNPHW Act and sections 294(b) and 506(i) IPC and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.10,000/-, in default to undergo one week simple imprisonment for the offence under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and sentenced to undergo 2 days simple imprisonment for the offence under section 294(b) IPC and sentenced to undergo six months simple imprisonment for the offence under section 506(i) IPC and directed to run the sentences concurrently. On appeal, the first appellate court, partly allowed the appeal filed by the petitioner and in respect of the offence punishable under section 294(b) IPC, confirmed the findings of the trial court and in respect of the offence under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, confirmed the fine imposed by the trial court, but sentence of imprisonment is modified to the effect that the accused has to undergo simple imprisonment of six months instead of one year and in respect of the offence punishable under section 506(i) IPC, the same was set aside. Aggrieved by the judgment of the first appellate court, the petitioner/accused is before this court.

4.Heard both sides and perused the materials available on record.

5.The main contention raised on the side of the petitioner/accused is that there are lot of discrepancies in the evidence of the prosecution witnesses and PW3 and PW4, who are cited as eye witnesses have not seen the occurrence, since PW1 stated in her complaint and evidence that only after hearing the shout, PW3 and PW4 have come and PW3 and PW4 are interested witnesses and due to property dispute between the family of PW1 and the accused, PW1 gave a false complaint as against the accused and prays that the accused is entitled to acquittal.

6.PW1 is the victim and she gave Ex.P1 complaint. PW1 in her complaint and evidence stated that on 30.10.2012 at 6.15 pm, she went to pour waste water opposite to her house and when she returned to her house, at that time, the accused raised his lungi and did some obscene act and thereby caused disgrace to her modesty and mental agony to her and when it was questioned by her, the accused used filthy language and threatened her.



7. PW1 in her complaint stated that after hearing her shout, PW3 and PW4 have come and PW1 in her complaint stated that when she returned to her house after pouring water opposite to her house, she saw that the accused raised his lungi and did some obscene act and when it was questioned by her, the accused used filthy language and threatened her and after hearing her noise, PW3 and PW4 have come. On careful perusal of Ex.P1, it reveals that only after hearing the noise of PW1, PW3 and PW4 have come. Hence, it is not possible for PW3 and PW4 to see the occurrence. Therefore, in this case, in respect of the occurrence, only the evidence of PW1 alone is available. This case is mainly based on the solitary evidence of PW1. When the evidence of solitary witness is cogent, trustworthy, the evidence of the solitary witness can be relied upon. PW1 in her complaint and evidence categorically stated that on 30.10.2012 at 6.15 pm, when she returned to her house after pouring the waste water opposite to her house, at that time, the accused raised his lungi and did some obscene act. The accused is a known person to PW1 since he is residing next to the house of PW1. Hence, PW1 easily identified the accused. On perusal of Ex.P4 (Rough Sketch), the place of occurrence is before the public toilet. PW1 also stated that at the time of occurrence, the accused only stood near the public toilet. Further, on the side of the accused, it is argued that at the time of occurrence, there was winter season and hence, at 6.15 pm, there was sunset and it was dark and hence, it is not possible for PW1 to see the occurrence. But no suggestion was put to PW1 that at the time of occurrence, there was dark and hence, it was not possible for PW1 to see the accused. As per the version of the prosecution, the time of occurrence is 6.15 pm. Hence, it is held that there is no dark at that time and further, the accused is very much known to PW1. Hence, it is easy for PW1 to identify the accused. Therefore, the argument put forth on the side of the accused stating that the time of occurrence is 6.15 pm and hence, it is not possible for PW1 to see the accused is not at all acceptable.

8. The learned Government Advocate (Criminal side) appearing for the respondent/State argued that the place of occurrence is a public place and the accused raised his lungi and used filthy language and due to it, PW1's modesty was disgraced and she had mental agony and prays that the accused is not entitled to acquittal.

9. Per contra, on the side of the accused, it is argued that in Ex.P1, it is stated that after hearing the shout of PW1, PW3 and PW4 have come and no other persons available in the place of occurrence and there was no public view and hence, the offence under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and section 294(b) IPC are not made out and prays that the accused is not entitled to acquittal.

<https://hcservices.in>

10. In this case, it is necessary to decide whether the



accused raised his lungi and did some obscene act and when it was questioned by PW1, whether the accused used filthy language. PW1 in her complaint and evidence categorically stated that on 30.10.2012 at 6.15 pm, when she returned to her house after pouring water opposite to her house, the accused raised his lungi and did some obscene act. On careful perusal of the evidence of PW1, it reveals that her evidence is cogent, trustworthy and believable. When the solitary evidence is cogent and trustworthy, the same can be relied upon by the court. Hence, from the evidence of PW1, it reveals that on the date of occurrence, the accused raised his lungi and did some obscene act. Hence, it is held that the offence under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act is made out as against the accused.

11.The further contention raised on the side of the petitioner/accused is that the first appellate court set aside the offence under section 506(i) IPC on the ground of insufficient evidence and originally, the case has been registered for the offence under section 506(i) IPC along with 294(b) IPC for the allegation that the petitioner has threatened the de-facto complainant by using the word that தேவடியா முண்டை பேசாமல் போய் விடு இல்லாவிட்டால் உன்னை கொலை செய்து விடுவேன் . it is concurrent single statement of the petitioner, according to the complaint given by the de-facto complainant. So, if the offence under section 506(i) IPC is not attracted and consequently, the offence under section 294(b) IPC could not be attracted.

12.The learned Government Advocate (Criminal side) appearing for the respondent/State submitted that PW1 categorically stated that on the date of the occurrence, when PW1 went to pour waste water opposite to her house, at that time, the accused raised his lungi and did some obscene act and when it was questioned by her, the accused used obscene words and threatened her and the accused used obscene words in the public place and the offence under section 294(b) IPC is attracted.

13.In this case, PW1 in her complaint stated that on the date of the occurrence, when she went to pour waste water opposite to her house, the accused raised his lungi and did some obscene act and when it was questioned by her, he used obscene words such as "தேவடியா முண்டை பேசாமல் போய் விடு உன்னை கொலை செய்துவிடுவேன் " and assaulted her and after hearing his voice, PW3 and PW4 have come and the accused ran away. In this case, already it was decided that PW3 and PW4 have come only after hearing the noise of PW1, it is not possible for them to see the occurrence. PW1 has not stated that at the time of occurrence, the public present in the place of occurrence. Hence, from the evidence of PW1, it reveals that no witness saw the occurrence. Therefore, there is no public view. At this juncture, it is necessary to refer section 294(b) IPC, which would run thus:-



*"294 (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.*

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14. In this case, already it was decided that no witness saw the occurrence. Hence, there is no chance to cause annoyance to the bystanders and to others, who happened to be in such a public place by the act of the accused. As per the prosecution case, at the time of occurrence, when PW1 questioned the activities of the accused, he used filthy language and threatened her. The first appellate court found that the offence under section 506(i) IPC is not attracted. But the first appellate court found that the offence under section 294(b) IPC is made out. Hence, the trial court wrongly came to the conclusion that the offence under section 294(b) IPC is made out since there is no public view.

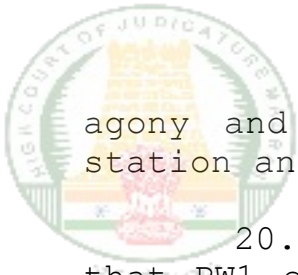
15. Further, PW1 in her complaint categorically stated that only after hearing her shout, PW3 and PW4 have come. Already, it was decided that PW3 and PW4 have come only after hearing the noise of PW1 and hence, it was not possible for her to see the occurrence. Therefore, there is no public view and it is held that the offence under section 294(b) IPC is not made out as against the accused.

16. The learned counsel appearing for the petitioner/accused further argued that there is civil dispute between the family of the accused and the family of PW1 and hence, a false case was foisted against the accused and prays that the accused is entitled to acquittal.

17. To prove the above contention, on the side of the accused, the grand-father of the accused was examined as DW1 and Exs.D1 to D3 were produced. On perusal of the evidence of DW1 and Exs.D1 to D3, it reveals that civil suits are pending between the father of PW1 and the family of the accused in respect of the property allotted to the Muslims, who are residing near the place occurrence. In the above suits, PW1 and the accused are not parties. Hence, the argument put forth on the side of the accused stating that only due to the civil dispute, PW1 gave a false complaint against the accused is not at all acceptable.

18. The learned counsel appearing for the petitioner/accused also argued that the date of occurrence is 20.10.2012, but PW1 gave the complaint only on 01.11.2012 and there was a delay in giving the complaint to the police and hence, it is fatal to the prosecution.

<https://hcservices.ecourts.gov.in/PWServices>  
19. PW1 during her evidence stated that after her husband returned from his work, she narrated the occurrence to her husband and further, due to the activities of the accused, she had mental



agony and hence, she in the next morning, went to the police station and gave Ex.P1 complaint to the police.

20. On perusal of Ex.P1 and the evidence of PW1, it is seen that PW1 categorically stated that due to the occurrence, she had mental agony and further, PW1 in her evidence stated that on the date of the occurrence, after her husband returned from his duty, she narrated the occurrence and due to mental agony, she in the next day went to the police station and gave Ex.P1 complaint. Hence, it is held that on the side of the prosecution, proper explanation was given for the delay in giving the complaint to the police and therefore, it is not fatal to the prosecution.

21. For all the reasons stated above, this court is of the considered view that the petitioner is not found guilty for the alleged offence punishable under section 294(b) IPC and hence, he is acquitted from the said charge. In respect of the offence under section 4 of Tamil Nadu Prohibition of Harassment of Women Act, the punishment imposed by the first appellate court is confirmed. However, considering the fact that the petitioner is the sole breadwinner of the family, the punishment imposed for the said offence is reduced to 3 months of simple imprisonment.

22. In the result, the Criminal Revision is **partly allowed**. The punishment imposed on the petitioner/accused for the offence under section 4 of Tamil Nadu Prohibition of Harassment of Women Act, is reduced to **3 months SI**. In respect of the punishment under section 294(b) IPC imposed by the first appellate court, it is set aside. The period of sentence, if any already undergone by the petitioner/accused shall be given set off under Section 428 of Cr.P.C. The petitioner/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar (CS)

To

1. The IV Additional Sessions Judge, Tirunelveli.

2. The Additional Mahila Court, Tirunelveli.

3. The Judicial Magistrate No. IV,  
(Additional Mahila Court), Tirunelveli.

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

4. The Sub Inspector of Police,  
Thachanallur Police Station, Tirunelveli.



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

6.The Section Officer Criminal Section (Records) (2 Copies )  
Madurai Bench of Madras High Court, Madurai.

**Cr1.RC(MD)No.221 of 2015**  
**12.06.2020**

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