



BAIL SLIP

The Appellant Accused namely Ramachandran aged about 49 years, S/o Mahalingam was directed to be released on bail as per order of this Court dated 18.01.2016 made in Crl.M.P(MD)No. 392 of 2016 in Crl.R.C (MD)No. 19 of 2016 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.R.C(MD)No.19 of 2016

Ramachandran ...Petitioner / Appellant / Accused

Vs

State through
The Inspector of Police,
Kallidaikuruchi Police Station,
Tirunelveli District.
[Crime No.344 of 2008]

...Respondent / Respondent / Respondent

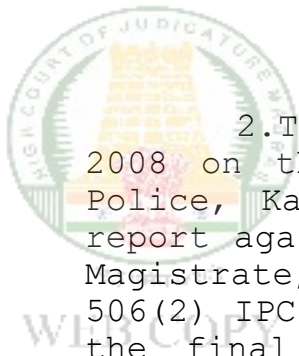
PRAYER: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the entire records connected with judgment in order dated 05.11.2015 in C.A.No.189 of 2010 on the file of the II Additional District and Sessions judge, Tirunelveli in c.C.No.15 of 2009 on the file of the learned Judicial Magistrate, Ambasamuthiram and set aside the same and to acquit the petitioner.

For Petitioner : Mr.R.Alagumani

For Respondent : Mr.A.Robinson,
Government Advocate [Crl Side]

ORDER

This criminal revision case has been filed as against judgment dated 05.11.2015 in C.A.No.189 of 2010 on the file of the learned II Additional District and Sessions judge, Tirunelveli.



2.The revision petitioner is an accused in Crime No.344 of 2008 on the file of the respondent Police and the Inspector of Police, Kallidaikuruchi Police Station, Tirunelveli filed a final report against this revision petitioner before the learned Judicial Magistrate, Ambasamuthiram for the offence under Section 451, 354, 506(2) IPC and the learned Judicial Magistrate, Ambasamuthiram took the final report on file in C.C.No.15 of 2019, examined nine witnesses and marked five documents and in conclusion, the trial Court found this petitioner not guilty for the charge under Section 506(II) IPC. However, the trial Court found this petitioner guilty for the offence under Section 451 IPC, convicted and sentenced him to undergo three months rigorous imprisonment and also found this petitioner guilty for the offence under Section 354 IPC, convicted and sentenced him to undergo one year rigorous imprisonment with a fine of Rs.1000/-, in default to undergo one month rigorous imprisonment. Both the sentences were ordered to run concurrently.

3.Aggrieved over the same, the petitioner preferred an appeal before the Court of Sessions and the same was taken on file in C.A.No.189 of 2010 by the learned III Additional District and Sessions Judge, Tirunelveli and the same was dismissed by judgment dated 05.11.2015.

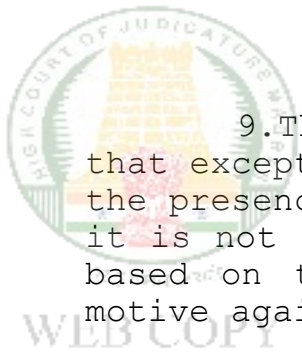
4.As against the order of conviction and sentence, the revision petitioner has filed the present revision case.

5.Heard Mr.R.Alagumani, learned counsel for the petitioner and Mr.Robinson, learned Government Advocate [Crl Side].

6.This revision case has been filed on the ground that the Courts below have failed to consider the extraordinary delay in reporting the incident, the contradiction between the PW1 and PW2 and the relationship of the petitioner with the defacto complainant and the petitioner is an innocent.

7.In addition to these grounds, the learned Counsel for the revision petitioner submitted that there was a civil dispute between the petitioner and the defacto complainant. The defacto complainant's father sold the land to the revision petitioner and with that enmity, the defacto complainant foisted this false complaint against this revision petitioner.

8.The learned Counsel for the petitioner has also submitted that the petitioner is a close relative to the defacto complainant and Cousin to the petitioner, the petitioner is the cousin to the defacto complainant and without considering this relationship, the Courts below have mechanically found this petitioner guilty for the offence under Section 354 IPC.



9.The learned Counsel for the petitioner also pointed out that except PW1 and PW2, all other witnesses have turned hostile and the presence of PW2 is not mentioned in the complaint and therefore, it is not safe to sustain the conviction imposed on the petitioner, based on this solitary evidence. That apart, PW1 is also having motive against this revision petitioner.

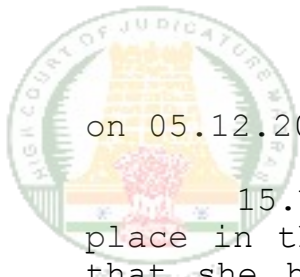
10.The learned Counsel further submitted that according to the complainant, she gave oral complaint in the Police station, whereas, the Constable PW9, who registered the complaint admitted that it is a written complaint and therefore, he raised a doubt that the earlier complaint has been suppressed.

11.Per contra, the learned Government Advocate [Crl Side] submitted that PW1 and PW2 have stated about the occurrence and this petitioner, who is a relative having relationship of brother, taking advantage of her loneliness, trespassed into her house on the date of occurrence on 04.12.2008 at about 1.00am, in the midnight with an intention to have sex with her, when he pulled her hands and attempted to outrage her modesty, PW1 came out of the house and raised a hue and cry. Hearing the noise, the neighbours PW3 and PW6 rushed to the spot, but the accused left the place of occurrence. However, he intimidated her that he would set her ablaze. No doubt the trial Court acquitted the petitioner/accused for the offence under section 506(II) IPC, however, found this petitioner guilty for the offence under Section 451 and 354 IPC and the appellate Court also considering the evidence, dismissed the appeal.

12.The learned Government Advocate (Crl.Side) also pointed out that the ground raised by this petitioner for the motive that on account of purchasing the land by this petitioner from the defacto complainant's father, cannot be considered at this stage, when this ground has not been taken either before the trial Court or before the appellate Court. He also submitted that by producing the sale deed, this new ground has been raised at the stage of revision, which cannot be entertained and moreover, the sale deed is of the year 1998, 10 years prior to the date of occurrence and therefore, it cannot be a ground to interfere with the orders of the Courts below.

13.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

14.The defacto complainant/PW1 is a widow, she lost her husband 10 years back and was residing with her son PW2, who was 12 years old at the time of occurrence. On 04.12.2008 at about 1.00am, the petitioner is said to have trespassed into her house and attempted to outrage her modesty, PW1 raised an alarm and on the intervention of the neighbours of PW6 and another, the accused left the place. Though the complaint was lodged on the next day,



on 05.12.2008, at about 2.00pm.

15.We have to bear in mind that the occurrence has taken place in the midnight at 1.00am and in her evidence, PW1 has stated that she has reported the incident to the Panchayat president and thereafter, she went by walk to the Police Station and has reported the incident on 05.12.2008 at about 2.00pm. Admittedly, PW1 is a widow, was not having anybody except PW1 her son. After the occurrence, PW1 has also taken some efforts by reporting the incident to the Panchayat President and then reported the same before the Police Station.

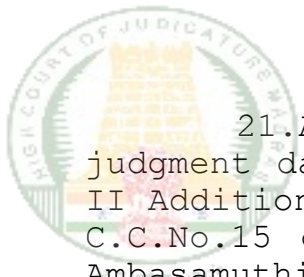
16.The respondent Police also registered the case on 05.1.2008 conducted the investigation and filed the final report as against this petitioner for the offence under Sections 354, 451 and 506(II) IPC.The trial Court found this petitioner not guilty for the offence under Section 506(II) IPC and found him guilty for the offence under Sections 451 and 354 IPC and sentenced them as stated supra.

17.Though the prosecution has examined the neighbours of PW1, one Ramummmal was examined as PW3 and Baskaran was examined as PW4 and Natarajan as PW5, except PW1 and PW2 all others did not support the case of the prosecution and therefore, during the trial what is available is the evidence of PW1 and PW2.

18.Their evidence are cogent and the accused / revision petitioner is not able to shatter their evidence in their cross examination though their chief examination was recorded on 25.08.2009 and the cross examination was made after eight months. PW1 was examined on 25.08.2009. But she was cross examined by the petitioner only on 16.04.2010. Similarly PW2 examined on 25.02.2009 was cross examined on 20.05.2010. Even then, PW1 and PW2 have clearly stated about the occurrence and the petitioner has failed to demolish their evidence during the cross examination. The available evidence has clearly established the offence committed by the petitioner and this Court is of the view that there is no reason to interfere with the orders of the appellate Court and the trial Court.

19.The scope of Criminal Revision under Section 397 r/w 401 CrPC is very limited and this Court cannot re-appreciate the evidence, unless and until there is a illegality, perversity or impropriety in the findings of the trial Court and the appellate Court.

20.The grounds raised by the petitioner in this revision, do not lead to any illegality, perversity or impropriety in the findings of the Court below.



21. Accordingly, the criminal revision case is dismissed. The judgment dated 05.11.2015 in C.A.No.189 of 2010 on the file of the II Additional District and Sessions judge, Tirunelveli and the order C.C.No.15 of 2009 on the file of the learned Judicial Magistrate, Ambasamuthiram are hereby confirmed. The trial Court is directed to secure the revision petitioner and confine him to prison to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The III Additional District and Sessions Judge,
Tirunelveli.
- 2.Do Thro- The Principal Sessions Judge, Tirunelveli.
- 3.The Judicial Magistrate, Ambasamuthiram.
- 4.Do Thro- The Chief Judicial Magistrate, Tirunelveli.
- 5.The Superintendent,
Central Prison,
Palayamkottai.
- 6.The Inspector of Police, Kallidaikuruchi Police Station,
Tirunelveli District.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to : The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Crl.R.C(MD)No.19 of 2016

17.08.2020

AVS(CO)

AP(25/09/2020) 5P 9C

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