



Bail Slip

The Petitioner/Accused viz Pilavendran S/o. Adaikaladoss(A1) was released on bail as per the order of this Court dated 16.07.2015 in CrI.M.P. No. 1/2015 in CrI.A.No.456/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.A.No.456 of 2015

Pilavendran

...Petitioner/A1

Vs.

The State represented by,
The Inspector of Police,
Needamangalam Police Station,
Crime No.155 of 2010
Thiruvarur District.

...Respondent/Complainant

PRAYER: This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to allow the appeal and to set aside the order of sentence made by the learned Sessions Judge, Mahila Court, Thiruvarur, in S.C.No.22 of 2012, on 30.06.2015 and consequently acquit the appellant from the charge framed.

For Appellant : Mr.Swami Subramanian

For Respondent : Mr.R.Vinoth Raja
Government Advocate (CrI.Side)

O R D E R

The convicted accused is the appellant herein. Challenging the order of conviction passed under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002, in S.C.No.22 of 2012, by the learned Sessions Judge, Mahila Court, Thiruvarur, dated 30.06.2015, the accused has preferred this appeal.

2.The respondent police has filed a final report stating that the deceased and the accused were neighbors. On 07.06.2010, when the victim was alone in her house, the accused



trespassed into her house with an intention to outrage her modesty. When the accused came near, the deceased raised alarm and at the intervention of witness Stella, the accused ran away. Thereupon, on enquiry about the incident, she scolded the accused. The deceased mentally depressed and sustained shame and fear to face others. In the result, on 27.06.2010 at about 12.00 p.m., when the parents were gone outside, by the above acts of he accused, the deceased herself poured kerosene upon her and set fire. She was admitted to hospital. On 05.07.2010 at about 03.40 hours, she was died at Thanjavur Medical College Hospital. Thereby, the accused appears to be committed an offence punishable under Section 306 IPC and Section 4(B) of Tamil Nadu Prohibition of Women Harassment Act, 2002.

3. During the trial, on the side of the prosecution PW1 to PW14 were examined, Exs.P1 to P13 were marked, MO1 was marked and on the side of the defense, Ex.D1/Discharge Summary of the deceased was marked.

4. The learned Sessions Judge has considered the evidence and held that there is no offence as made out under Section 306 of IPC, however, held that the accused has committed the offence under Section 4(B) of the Tamil Nadu Prohibition of Woman Harassment Act and accordingly, laid the conviction and sentence as stated supra and hence, the Criminal Appeal.

5. Heard both the learned counsels and perused the materials placed on record.

6. The learned counsel for the appellant would contend that the sole occurrence witness viz., PW7/Stellameri has admitted that she has seen the accused in the presence of the deceased and she was informed from the deceased that the accused had hugged and kissed her and hence, PW7 has slapped the accused. In the cross examination PW7 had denied that "she slapped the accused".

7. There is a material contradiction in the statement of PW7 who has been projected as an eyewitness in the present case to speak about the action of the accused with the deceased. The investigation officer/PW12 has accepted that name of the accused is Pilavendran and not Pulavendran and also accepted the fact that he has not investigated as to whether there were any other persons by name Pulavendran. Hence, due to the previous enmity between the accused and the PW1's family with regard to purchase of land, the appellant has been falsely implicated.

8. The learned Sessions Judge has acquitted the accused for the charge under Section 306 of IPC and Section 4(B) of Tamil Nadu Prohibition of Women Harassment Act, 2002 and convicted for



the offence under Section 4 of the Tamil Nadu Prohibition Women Harassment Act, 2002. During the investigation period viz., 06.07.2010 to 29.07.2010, the accused was inside the prison. Minimum fine of Rs.10,000/- has been paid.

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9.The learned Government Advocate (Crl.Side) appearing for the respondent would contend that before the occurrence, the accused went to the house of the deceased, taking advantage that the deceased was alone at her house, the accused hugged and kissed her. Due to that, the deceased felt ashamed and she herself committed suicide by pouring kerosine and set fire. The deceased given a dying declaration before the Judicial Magistrate in a fit state of mind while she was conscious. The evidence of the doctors and Judicial Magistrate clearly corroborated the dying declaration given by the deceased. The dying declaration proved beyond reasonable doubts and inspired confidence. Hence, the prosecution has proved the charges laid against the accused.

10.The date of the occurrence is 27.06.2010, Ex.P1/complaint was given on 05.07.2010 and the first occurrence was not mentioned in Ex.P1/complaint and Ex.P8/FIR. There is no evidence with regard to the incident happened immediately prior to 27.06.2010.

11.PW1/Michaeldasan is the father of the deceased; PW2/Jamunamary is the mother of the deceased; PW3/Mariyadoss is the brother of PW1; PW4/Johnson is the relative of the deceased; PW5/Tamilselvam is the cousin brother of the deceased; PW6/Irudhayasamy is the attesting witness to the confession statement; PW7/Stellamary is the neighbour of the deceased; PW8 is the Doctor, who had conducted post-mortem and issued Ex.P4/post-mortem certificate; PW9 is the Head Constable, who handed over the body of the deceased for autopsy and also handed over the body of the deceased to the relatives; PW10 is the Doctor, attached to Mannargudi Government Hospital, who had examined the victim girl and issued Ex.P5/Accident Register Copy; PW11 is the Judicial Magistrate, which recorded the dying declaration of the deceased as to the fitness of the mental stage by the deceased and dying declaration was marked as Ex.P7; PW12 is the Inspector of Police attached to Needamngalam Police Station, had conducted the investigation and marked Ex.P2/Observation Mahazar, Ex.P3/Seizure Mahazar, Ex.P8/FIR, Exs.P9/Rough Sketch, Ex.P10/Inquest Report, Ex.P11/requisition for postmortem & MO-1/Kerosene bottle. After completion of investation, he has filed charge sheet under Section 306 of IPC and Section 4(B) of Tamil Nadu Prohibition of Women Harassment Act, 2002; PW13 is the Doctor, who has issued Ex.P12/Accident Register Copy; PW14 is the Doctor, who had issued



Ex.D1/discharge summary and Ex.P13/fitness certificate. Ex.P1 is the complaint, Ex.P6 is the requisition for recording Dying declaration.

12.After going through the evidence of PW1 & PW2 coupled with the evidence of PW7, this Court finds that there is a previous enmity between the deceased family and the accused in connection with purchase of land by the accused near the house of the deceased, assumes significance. Furthermore, none of the witness have deposed regarding the alleged "kissing and hugging of the accused on the deceased". Even PW6 could said that the occurrence has taken in his place when he has enquired about the same.

13.It remains to be stated that there is a finding by the learned Sessions Judge to the effect that some aspects of the defence case has been accepted by PW1(father of the deceased), PW2(mother of the deceased) & PW7 (neighbour of the deceased). It is further evidence of the investigation officer/PW12 that there is another person by name Pulavendran and the name mentioned in the dying declaration is Pulavendran while the appellant is Pilavendran, name mentioned by the deceased in the dying declaration is Pulavendran and hence, as rightly contended by the learned counsel for the appellant there is a dispute as to the identity of the accused. The investigation officer in the cross examination has accepted that name of the present accused is Pilavendran not Pulavendran and also accepted that he has not investigated about the other person as mentioned in the dying declaration, caused serious doubt as to the identity of he accused. Unless identity of the accused is established, conviction cannot be laid.

14.Taking into consideration the material contradiction between the evidence of PW1, PW2 and PW7 as to the alleged occurrence on 07.06.2010 and subsequent complaint also lacks essential ingredients of the women harassment. The identity of the accused is found to be doubtful as admitted by the investigation officer.

15.On a perusal of dying declaration, recorded by PW11, it is seen that the name of the accused stated by deceased differs from the name of the present appellant and the same assumes significance and hence, I find that the prosecution has failed to prove the charge under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002, beyond reasonable doubt and by operation of law he is entitled for benefit of doubt.



16. Giving the benefit of doubt to the appellant herein, this Criminal Appeal stands allowed and the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Thiruvarur, in S.C.No.22 of 2012, on 30.06.2015, is hereby set aside and bail bond stands cancelled.

s/d-
Assistant Registrar (CS IV)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge, Mahila Court,
Thiruvarur.
 2. The District Munsif cum Judicial Magistrate
Needamangalam
 3. The Inspector of Police,
Needamangalam Police Station,
Crime No.155 of 2010
Thiruvarur District.
 4. The Public Prosecutor, High Court, Madras.
- +1 CC to Mr. Swami Subramanian, Advocate sr 35913.

Cr1.A.No.456 of 2015

LN(CO)
SP(17/09/2021)