



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
28.10.2021

Date of Pronouncing Order
02.11.2021

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.556 of 2017
and
CrI.M.P.No.9878 of 2021

Sundararajan

.. Petitioner

Vs.

State rep.by
The Inspector of Police,
Koradacherry Police Station,
Thiruvarur District.
(Crime No.324 of 2010)

.. Respondent

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to set aside the conviction passed by the 1st Appellate Court in C.A.No.10 of 2016 dated 21.12.2016 on the file of the District and Sessions Court, Thiruvarur by confirming the order of conviction passed in C.C.No.183/2011 dated 06.08.2016 on the file of the Judicial Magistrate Court, Thiruvarur.

For Petitioner : Mr. K.M. Subramaniam

For Respondents : Mr.S.Vinoth Kumar
Government Advocate (CrI.Side)

O R D E R

The matter is heard through "Video Conference".

2.Convicted sole accused is the revision petitioner herein.

3.This criminal revision is filed against the judgment and order of conviction in C.A.No.10 of 2016 dated 21.12.2016 on the file of the District and Sessions Court, Thiruvarur by confirming the order of conviction passed in C.C.No.183/2011 dated 06.08.2016 on the file of the Judicial Magistrate Court, Thiruvarur.



4.The respondent-police filed a charge sheet in Crime No.324 of 2010 alleging that on 24.10.2010 at about 1.00 pm, when the defacto complainant/P.W.1-Revathy was watching T.V., inside the house, in the absence of her parents, the accused through the backyard of the house, entered in the house of P.W.1 and caught hold of her and dragged her hand and against her wish, he has touched the breast and P.W.1 slapped the accused. In the meantime, the father of the victim entered in the house, as he heard, hue and cry, the accused ran away from the house and at that time, P.W.2/father of P.W.1, chased the accused and the accused ran away from the scene, in respect of which, P.W.1/Revathi lodged the complaint/Ex.P1 and the same was registered as Ex.P6/FIR, for the alleged offence under Sections 451, 354, 376 r/w 511 of IPC.

5.After investigation, Ex.P8/Alteration Report is filed, thereby, charge sheet has been filed under Sections 451, 354 and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. After trial, the learned Magistrate has convicted the accused, as stated supra and on appeal in CrI.A.No.10/2016, the same was dismissed. Hence, the revision.

6.The learned counsel for the revision petitioner would contend that dual punishment for the same nature of two offences cannot be imposed in respect of 354 of IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

6(a). Further, filed a petition in CrI.M.P.No.9878/2021, for compounding the sentence and consent affidavit has been filed. Without prejudice to the consent affidavit for compounding the offence, the learned counsel further contended that there is ill motive for false implication of the accused.

7.The suggestive case of the defence is that on earlier to the occurrence, the father of the victim girl has sustained injuries during the course of his coolie work with the petitioner, by climbing the tamarind tree, for plucking the ripe. While he was climbing, he fell down in a darkness. Consequently, P.W.2/father of the victim, sustained injuries due to his own act. However, P.W.2 claimed huge compensation from the accused. As the accused failed to make payment, hence, false case has been foisted against the petitioner/accused. The victim/P.W.1 used as a tool to extract more money.

8.The learned counsel for the revision petitioner drew my attention to the admission made by P.W.1/victim fact of that his father (P.W.2) had fell down from the tamarind tree and claim of



compensation demanded by them and refused by the accused.

9. Per contra, the learned Public Prosecutor would contend that taking advantage of the absence of the parents at home, on that day, the accused came to the house through the backyard, entered the house of P.W.1/victim and caught hold of her hand and thereafter, pulled her hand by touching the modesty of the girl and touched breast and thereby, he has committed the offence.

10. The evidence of P.W.1 is taken up for consideration as to the charge, after going through the evidence of P.W.1, on combined reading of chief and cross examination, I find that P.W.1/victim has clearly deposed the act of the accused inside the house and the manner how he misbehaved with her. On hearing the hue and cry of P.W.1, when the father entered the house, accused escaped through the backyard of the house and he (P.W.2) also chased the accused, assumes significance.

11. There is a delay of three days in filing Ex.P1/complaint. P.W.4/Panchayat President said to have conducted the panchayat before filing the complaint. It is specifically stated that in Ex.P1/complaint, so also in Ex.P6/FIR, when there is a delay in filing the complaint, the delay by itself is not fatal. Whether, the delay was explained properly by the prosecution, is to be considered. Matters of this kind as to the sexual assault, on touching upon the modesty of the girl or women, there will be some resistance in the mind of the parents before filing the complaint before the police and taking into the fact and also the evidence of P.W.4/Panchayat President, I find that the delay of three days is properly explained by the prosecution. Consequently, the said delay is not fatal to the prosecution.

12. As per Section 2(a) of Tamil Nadu Prohibition of Woman Harassment Act "Harassment" means any indecent conduct or act 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." The Hon'ble Apex Court in Ashok Kumar Vs. State reported in (2014) SCC OnLine Mad 5338, in which, it is held as follows:-

In view of the fact that Section 3 of the Act specifically prohibits the harassment of women at any place and conjoined reading of Section 3 and 4 unerringly point out that 'at any place' mean wherever, at that perspective in the present case on hand, the victim Chitra even though she had set



WEB COPY

fire to herself by pouring kerosene on 08.01.2005 at 3.00 p.m in the dwelling house of P.W.2 the said house squarely comes within the term any place and as such, the contra plea taken on behalf of the appellant/accused is out rightly rejected by this Court...

13.As discussed supra, P.W.1 has narrated the incident, what has happened during the absence of parents. The act of the accused, falls within the definition of 2(a) of Tamil Nadu Prohibition of Woman Harassment Act and hence, the act of the accused commissioned at the alleged place of occurrence namely "inside the house" and in view of the definition under Section 3 of the Tamil Nadu Prohibition of Woman Harassment Act, "at any place", when the act has been committed against the women, the same is attracted.

14.In view of the discussion, in the preceding paragraphs, I find that the act of the accused in touching the private part of P.W.1 amounts to harassment within, the definition of 2(a) of the Tamil Nadu Prohibition of Woman Harassment Act and such an act has been committed by the accused inside the house. In view of the specific word that 'at any place' the offence as stated that Section 3 of the Act has been satisfied. Consequently, he is punishable under Section 4 of the Woman Harassment Act.

15.Section 4 is the charging Section, inflicting the penalty. Hence, considering the evidence of P.W.1/victim, the conviction under Section 4 of Tamil Nadu Prohibition of Woman Harassment Act, is upheld.

16.Taking note of the fact that the accused had pulled her hand against her will, without her permission and following the decision of the Hon'ble Supreme Court in Rupan Deol Bajaj and others Vs.Kanwar Pal Singh Gill and others [1996 Cr1 LJ 381] case, I hold that the conviction laid by both the Courts below under Sections 354 and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act, is held to be sustainable. Since the nature of the offence under Sections 354 and Section 4 of Tamil Nadu Prohibition of Women harassment Act are similar in nature, it is suffice to grant sentence in any one of charge alone.

17.Accordingly, the conviction laid for Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act is hereby confirmed. It is clear from the evidence of P.W.1 that he has pulled the hands of P.W.1, touching upon the modesty of the



woman with an intention to defame her and followed thereby, he also touched the breast of P.W.1 and hence, the conviction laid under Section 354 of IPC is also confirmed.

18. In view of the clear evidence of P.W.1/victim, which the presence of the accused has also been submitted by P.W.2, I find that the conviction under Section 451 of IPC is also made out. The suggestive case of the defence, as narrated above, has not been probalised the preponderance of the level and hence, the suggestive case of the defence stands negatived and accordingly, the conviction laid by the trial Court is confirmed.

19. On the point of quantum of sentence parties are heard.

20. Taking note of the entirety of the circumstances and act of the accused on the body, I find that the sentence awarded under Section 451 of IPC, may be reduced to three months and the conviction under Section 4 of the Act is reduced to one month and no separate sentence be granted for the conviction under Section 354 of IPC. In view of the sentence granted in Tamil Nadu Prohibition of Woman Harassment Act and fine amount already levied by the trial Court is kept intact. All the sentences shall run concurrently.

21. In the result, this criminal appeal is partly allowed, only to the extent of reduction of sentence as indicated above. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

AT

To

1. The Inspector of Police,
Koradacherry Police Station,
Thiruvarur District.
2. The District and Sessions Court,
Thiruvarur.



3.The Judicial Magistrate Court,
Thiruvarur.

4. The Public Prosecutor,
High Court, Madras.

Crl.R.C.No.556 of 2017 and
Crl.M.P.No.9878 of 2021

KG(CO)
GN(30/11/2021)