



BAIL SLIP

Accused namely R.Loganathan was released on bail vide order of this Court dated 31.08.2016 in CRL.MP(MD).No. 7509 of 2016 in CRL.RC(MD).No. 585 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Pronounced on : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD).No.585 of 2016

R.Loganathan : Petitioner / Appellant/ Accused
Vs.

State rep.by the Sub Inspector of Police,
Sessions Court Police Station,
Tiruchirappalli.

Crime No.58 of 2014. : Respondent / Respondent / Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 and 401 of Cr.P.C, to set aside the judgment dated 21.09.2015 passed in C.A.No.161 of 2014 on the file of the III Additional District Judge, Tiruchirappalli, confirming the judgment dated 07.11.2014 rendered in C.C.No.108 of 2014 on the file of the Judicial Magistrate No.II, Tiruchirappalli.

For Petitioner : Mr.S.Subbiah, Senior Counsel
for Mr.G.Aravinthan.
For Respondent : Mr.RMS.Sethuraman,
Government Advocate (Criminal Side)

ORDER

The Criminal Revision Petition is directed against the concurrent judgment of conviction passed in C.A.No.161 of 2014, dated 21.09.2105 on the file of the learned III Additional District Judge, Tiruchirappalli, confirming the judgment made in C.C.No.108 of 2014, dated 07.11.2014 on the file of the Judicial Magistrate No.II, Tiruchirappalli.

2.The case of the prosecution is that the defacto complainant is living with her mother, that on 27.02.2014, the defacto complainant after attending the case in H.M.O.P.No.295 of 2013 on the file of the Principal Subordinate Court, Tiruchirappalli, pending between herself and her husband, came out at about 11.00 am, that when she was talking with the other witnesses near Avin Tea Stall in the Court campus, the accused came to that place and abused her in filthy language and called her as whore, that the accused removing his chappel, had beaten the defacto complainant on her left



cheek with the chappel and caused annoyance and that thereby, the accused had committed the offences punishable under Sections 294(b), 355 of IPC and under Section 4 of Tamil Nadu Prevention of Harassment of Women Act, 1998.

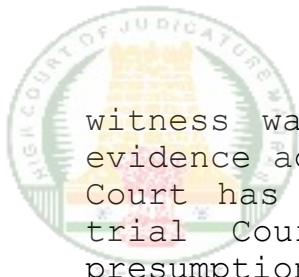
3. During trial, the prosecution in an attempt to prove its case, has examined 7 witnesses as P.W.1 to P.W.7 and exhibited 5 documents as Ex.P.1 to Ex.P.5. The revision petitioner/accused has adduced neither oral nor documentary evidence.

4. The learned Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both sides, has passed the judgment dated 07.11.2014, convicting the accused for the offence under Section 294(b) and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and sentenced him to undergo simple imprisonment for 30 days and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 7 days for the offence under Section 294(b) IPC and to undergo simple imprisonment for 36 months and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for 6 months for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Aggrieved by the said judgment of conviction, the accused has preferred an appeal in C.A.No.161 of 2014 and the learned the III Additional District Judge, Tiruchirappalli, upon perusing the records and on hearing the arguments of both the sides, has passed the impugned judgment, dated 21.09.2015, dismissing the appeal and thereby, confirming the judgment of conviction and sentence passed by the trial Court. Aggrieved by the said judgment of dismissal, the accused has come forward with the present revision.

5. As already pointed out, there is concurrent verdict of conviction and sentence against the revision petitioner. The revisional jurisdiction of this Court under Section 397 and 401 Cr.P.C., is confined to legality, propriety and correctness of the concurrent findings of conviction entered and sentence imposed on the accused.

6. It is pertinent to mention that the power and jurisdiction of the revisional Court cannot be equated with the power and jurisdiction of the Appellate Court, nor the same can be treated as second Appellate jurisdiction. While exercising the revisional jurisdiction, there is no scope for re-appreciating the entire evidence again. But, at the same time, if the appreciation of the evidence is tainted with perversity, the same can be looked into and interfered with by the revisional Court. Let us consider the case on hand bearing the above legal position in mind.

7. The learned counsel for the petitioner would submit that there was a delay in lodging the complaint by the defacto complainant and the delay is not properly explained, that though there were so many persons in the Court campus, no independent



witness was examined, that there were many contradictions in the evidence adduced by the prosecution witnesses and that the Appellate Court has casually and mechanically confirmed the judgment of the trial Court on mere prejudice and mostly on assumptions and presumptions.

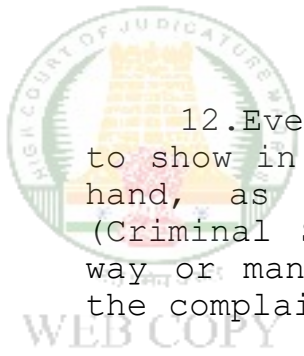
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8. Admittedly, P.W.1/defacto complainant and P.W.3 are the daughter and son of P.W.2 ; P.W.4 is a friend of P.W.3 and that the accused is a relative of the defacto complainant's husband. It is evident from the records that divorce and maintenance proceedings are pending between the defacto complainant and her husband. It is the specific case of the prosecution that on 27.02.2014, the defacto complainant/P.W.1 came to the Court campus to attend the hearing of the case in H.M.O.P.No.295 of 2013 and that after returning from the concerned Court, while she was standing near Avin Tea Shop, the accused came and abused her in obscene words and assaulted her with his chappel.

9. P.W.1 in her evidence would say that on 27.02.2014, she came to the Court to attend HMOP case along with her mother P.W.2, that after adjournment, she came out and when she was talking with others near Avin tea stall, the accused came to that place and abused her in filthy language, called her as whore and assaulted with his chappel four times on her cheek. It is the specific case of the prosecution that the incident was occurred at 11.00 am and that P.W.1 had lodged the complaint before the respondent police at 12.30 pm and on that basis FIR came to be registered.

10. The learned counsel for the revision petitioner would submit that there was a delay of 1 ½ hours for lodging the complaint, that the distance between the place of occurrence and the Police Station is just ½ Kilo meter and even by walk, the police station could be reached within five minutes, that P.W.1 has not assigned any reason for the delay either in her complaint or in her evidence and that since there is absolutely no explanation for the delay, the same is fatal to the case of the prosecution.

11. But as rightly contended by the learned Government Advocate (Criminal Side), during cross examination, P.W.1 has given proper explanation for the delay occurred. P.W.1 in her cross examination would say that after she was assaulted, she remained in the occurrence place for ¾ hours and she was crying and that thereafter, she had proceeded to the Police Station. As rightly observed by the Appellate Court, it is quite natural for any person, who was attacked with chappel in the public place, that person will be under severe humiliation and mental shock and that P.W.1 had admitted that she was crying in the occurrence place for about 45 minutes and that she had taken some time to come out of the trauma undergone. Moreover, it is settled law that mere delay in lodging the complaint by itself, is not sufficient to doubt the prosecution case.



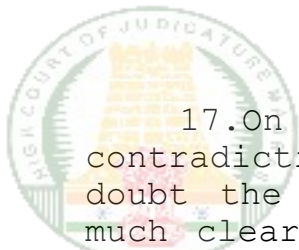
12.Even assuming that there is any delay, it is for the accused to show in what way, he was prejudiced by the delay. In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), the accused has miserably failed to show in what way or manner, the accused was prejudiced by the delay in lodging the complaint.

13.Admittedly, the occurrence was held in Tiruchirappalli District Court campus. P.W.1 to P.W.4 would say that many persons including Advocates were present. The learned counsel for the petitioner would submit that though the alleged occurrence was witnessed by many Advocates and general public, none of general public nor any Advocate had been examined to prove the alleged occurrence, that P.W.2 to P.W.4 are closely related to P.W.1 and are interested witnesses and that in the absence of evidence of independent witnesses, the evidence of interested witnesses cannot be relied to prove the alleged occurrence.

14.As rightly contended by the learned Government Advocate (Criminal Side), it is not mandatory to examine all the witnesses present in the occurrence place. As rightly observed by the learned trial Judge, the prosecution is duty bound to produce only such witnesses, which are essential for unfolding the prosecution case and that the question of examining the independent witnesses would arise only when the Court has some genuine doubt with respect to the evidence already adduced.

15.The learned trial Judge has rightly observed that the question of examining the independent witness is ultimately a question which pertains to the satisfaction of the judicial conscience of the Court in given facts and circumstances of the case. As already pointed out, the prosecution has cited and examined the mother, brother and brother's friend of the defacto complainant as P.W.2 to P.W.4 respectively and all the three eye witnesses P.W.2 to P.W.4 in their evidence would reiterate the version of P.W.1 regarding the occurrence.

16.The trial Court as well as the Appellate Court have specifically observed that the evidence of P.W.1 to P.W.4 are sufficient enough to prove the occurrence. As rightly held by the Courts below, the non examination of any independent witness does not affect the case of the prosecution. No doubt, the learned counsel for the petitioner has pointed out some contradictions in the evidence of the eye witness. Though P.W.2 in her evidence would say that after the occurrence, they had contacted their advocate, but whereas P.W.1 would say that she had not contacted her Advocate. P.W.1 to P.W.4 in their evidence have given contra version with respect to time at which they left the Police Station and the time and place where the witnesses were examined.



17.On considering the evidence of P.W.1 to P.W.4, the contradictions elicited by the defence are not material enough to doubt the prosecution version. Considering the above, it is very much clear that the Appellate Court has properly re-assessed the evidence and gave its findings concurring with the trial Court.

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18.The learned counsel for the revision petitioner would submit that the sentence imposed on the petitioner is excessive and arbitrary. He would further submit that the marriage between P.W.2 and her husband got dissolved by decree of divorce and that too by mutual consent by the learned Subordinate Judge, Tiruchirappalli and that the petitioner is none other than the close relative P.W.1's Husband. He would further submit that the petitioner is aged 55 years and that the alleged incident was occurred 7 years back. As already pointed out, the learned trial Judge has awarded three years simple imprisonment and fine of Rs.10,000/- for the offence under Section 4 of TNPHW Act. Admittedly, P.W.1 has not sustained any serious injury, but at the same time, assaulting a lady in a public place and that too with chappel cannot be viewed lightly.

19.On considering the above aspects, this Court is of the view that the imprisonment awarded is excessive and the same is liable to be reduced to one year simple imprisonment. But this Court is not inclined to interfere with the fine amount imposed for the said offence and also the punishment awarded for the offence under Section 294(b) IPC.

20.In the result, the Criminal Revision is partly allowed and the conviction and the sentence for the offence under Section 294(b) IPC stands confirmed and the conviction and sentence of fine for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act stand confirmed and the sentence of imprisonment alone is modified and is reduced to one year simple imprisonment. The trial Court is directed to take necessary steps to secure the accused to undergo the remaining part of sentence, if any.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1.The III Additional District Judge, Tiruchirappalli.

2.The Judicial Magistrate No.II, Tiruchirappalli.

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



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

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

+1 CC to M/s.P. JESSI JEEVA PRIYA, Advocate (SR-35388[F] dated
22/11/2021)

CRL.R.C. (MD) .No.585 of 2016
19.11.2021

MMS (CO)
KB (22.12.2021) 6P 7C