



BAIL SLIP

The Appellant/Sole Accused Muruganandam, S/o. Dhandayuthapani was directed to be released on bail of this Court order dated 09.02.2017 and made in CRL MP(MD).1223 of 2017 in CRL A(MD).41 of 2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2021
DELIVERED ON : 26.11.2021

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.A.(MD)No.41 of 2017

Muruganandam
S/o. Dhandayuthapani : Appellant/Sole Accused

Vs.

State Represented by
Deputy Superintendent of Police,
Thiruvaiyaru Sub-Division
in Budalur Police Station,
Thanjavur District.
(Crime No.68 of 2015) : Respondent/Complainant

PRAYER: Criminal Revision filed under Section 374 (2) of Criminal Procedure Code, to set aside the Judgment and Conviction dated 20.01.2017 by the learned I Additional District & Sessions Judge (PCR), Thanjavur in S.S.C.No.72 of 2015 and acquit the Appellant.

For Appellant : Mr.M.Karunanithi

For Respondent : Mr.T.Senthil Kumar
Government Advocate (Crl.side)

JUDGMENT

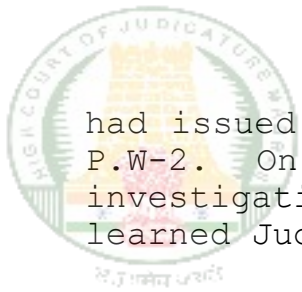
This Criminal Appeal has been filed against the judgment of conviction recorded by the learned I Additional District & Sessions Judge (PCR), Thanjavur in S.S.C.No.72 of 2015, dated 20.01.2017.

2. The facts which are relevant for consideration in this appeal as per the case of the Prosecution are briefly as follows:

2.1. P.W-1-Sappanimuthu belongs to Hindu Pallar Community. The Accused-Muruganandam in S.S.C.No.72 of 2015 belongs to Hindu Kallar



Community. On 05.04.2015 by around 6.00 p.m., one Chinraj was driving Harvesting Machine through Sorakudipatti, Kalliamman Koil Street. He had driven the harvesting machine without removing the extra fence for harvesting. While moving out the vehicle on the street, he knocked down the fence of Thamizharasan. When P.W-1 and others, particularly P.W-2 to P.W-4 asked the driver, if he had driven the vehicle after removing the extra fencing which are necessary for harvesting, it could not have damaged the fence. For this, the Accused herein who was a broker for the Harvesting Machine abused P.W-3 and P.W-4 in filthy language by calling their caste name. When P.W-1 questioned the Accused while he is uttering the caste name, the Accused brought iron rod from the Harvesting Machine and hit P.W-1 on his head. The Accused had hit P.W-1 twice on his head with the iron rod and one time on the left shoulder. When P.W-2-Thamizharasan questioned the same, the Accused attacked P.W-2 also on his head. P.W-5-Mohan Raja and P.W-6-Mathiyazhagan had taken injured P.W-1 and P.W-2 to the Thanjavur Medical College Hospital for treatment. P.W-9-Dr.Jeevaraman who had examined the injured P.W-1 and P.W-2 had admitted them in hospital as in-patient. P.W-9 had informed the Police about the incident. On receipt of the information from the Hospital, the Special Sub Inspector of Police, Budalur Police Station visited the Thanjavur Medical College Hospital and received written complaint from P.W-1. He returned to Budalur Police Station and placed the complaint under Ex.P-1 before P.W-10-Kaliyamoorthy-Sub Inspector of Police, Sengipatti Police Station who was holding additional charge of Budalur Police Station. On receipt of complaint under Ex.P-1, P.W-10 who was holding Additional charge of Budalur Police Station had registered the case in Cr.No.68 of 2015 of Budalur Police Station for the offences under Sections 294 (b), 324 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and Section 3(1) (r) (s) and 3 (2) (V a) of SC/ST (Prevention of Atrocities Act) (Amendment Act). The FIR registered by P.W-10 is Ex.P-11 and he had forwarded the original FIR under Ex.P-11 and original complaint under Ex.P-1 to the Court of the learned Judicial Magistrate, Thiruvaiyaru and copies of the same were sent to the Police Higher Officers in the Police Department including Superintendent of Police. The Superintendent of Police had by his proceedings appointed P.W-12-Sugumaran-Deputy Superintendent of Police, Thiruvaiyaru to investigate the case under Ex.P-11. On receipt of the proceedings and on receipt of the FIR, P.W-12 proceeded to the scene of occurrence i.e., the house of P.W-1 and prepared Rough Sketch under Ex.P-13 and Observation Mahazar under Ex.P-12 in the presence of witnesses viz., P.W-7-Tiruppathi and P.W-8-Ramesh. He had visited the Hospital and examined P.W-1 and P.W-2 and recorded their statements. He had examined the witnesses P.W-3-Sumathi, P.W-4-Keerthika, P.W-5-Mohanraja, P.W-6-Mathiyazhagan and P.W-7-Thiruppathi. He had obtained the community certificates under Ex.P-4 to Ex.P-8 from P.W-7 and P.W-8-Tahsildars. He had examined the Doctor who had treated P.W-1 and P.W-2 in the Hospital and who



had issued wound certificates under Ex.P-9 and Ex.P-10 to P.W-1 and P.W-2. On completion of investigation, he laid final report of the investigation under Section 173 of Cr.P.C., to the Court of the learned Judicial Magistrate, Thiruvaiyaru.

2.2. On receipt of the final report from P.W-12, the learned Judicial Magistrate had taken cognizance of the offence under Sections 294 (b), 324 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and Sections 3(1) (x), 3 (1) (xi) of SC/ST (Prevention of Atrocities) Act (Amendment Act). On taking cognizance of the offences, the learned Judicial Magistrate, Thiruvaiyaru had numbered the case as P.R.C.No.19 of 2015 and issued summons to the Accused.

2.3. On appearance of the Accused, the learned Judicial Magistrate had furnished copies to the Accused under Section 207 of Cr.P.C. Since offences are triable by the Court of Sessions, the learned Judicial Magistrate, Thiruvaiyaru had committed the case to the Court of the learned Principal Sessions Judge and bound over the case to the learned Principal Sessions Judge.

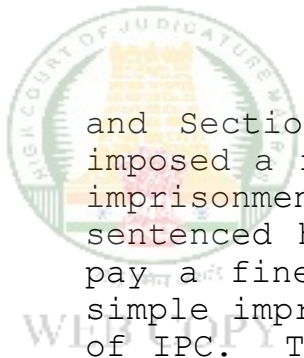
2.4. On receipt of records in P.R.C.No.19 of 2015 from the learned Judicial Magistrate, Thiruvaiyaru, the learned Principal Sessions Judge had made over the case to the Court of the learned First Additional District and Sessions Judge(PCR), Thanjavur and bound over the Accused.

2.5. On appearance of the Accused, the learned First Additional District and Sessions Judge (PCR) after hearing the arguments of the Prosecution and defence, had framed charges against the Accused under Sections 294 (b), 324 of IPC and Sections 3(1) (x), 3 (1) (xi) of SC/ST (Prevention of Atrocities) Act (Amendment Act). Since the Accused denied the charges and claimed to be tried, the learned First Additional District and Sessions Judge (PCR) had ordered trial.

2.6. During trial, the Prosecution had examined witnesses P.W-1 to P.W-12 and marked documents Ex.P-1 to Ex.P-13.

2.7. After closing of Prosecution evidence, the incriminating portion of the evidence bearing through P.W-1 to P.W-12 were put to the Accused under Section 313 of Cr.P.C., the Accused denied the incriminating evidence against him. After the proceedings under Section 313 Cr.P.C., the Prosecution had advanced the arguments and the defence had replied to the Prosecution arguments.

2.8. After hearing the arguments of the Prosecution and defence and on analysis of evidence through P.W-1 to P.W-12 and Ex.P-1 to Ex.P-13, the learned Sessions Judge had arrived at a conclusion that the Accused had committed the offence under Section 294 (b) of IPC



and Section 324 of IPC (2 counts) and convicted the Accused and imposed a fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 294 (b) of IPC and sentenced him to undergo two years of Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months of simple imprisonment on each counts for the offence under Section 324 of IPC. The Accused is acquitted from the charges under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 3 (i) (x), 3 (i) (xi) of the SC/ST(PoA)Act.

3. Aggrieved by the judgment of conviction and sentence of imprisonment, the sole Accused had preferred this appeal before this Court.

4. Mr.M.Karunanithi, learned counsel for the Appellant/Accused had submitted that the learned First Additional District and Sessions Judge (PCR), Thanjavur, had convicted the Accused, ignoring the evidence in cross-examination of the witnesses. He had convicted the Accused for the offence under Sections 294 (b) and 324 of IPC and the same is perverse. Therefore, the appeal is to be allowed and the judgment of conviction passed by the learned First Additional District and Sessions Judge (PCR), Thanjavur, had to be set aside and Accused to be acquitted.

5. Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) had submitted his written arguments. He had also replied to the arguments of the learned counsel for the Appellant/Accused stating that the judgment of the learned First Additional District and Sessions Judge (PCR) is well considered judgment. Only after assessment of evidence, the learned Sessions Judge had acquitted the Accused under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and Section 3(1) (r) (s) of SC/ST (Prevention of Atrocities) Act (Amendment Act) and convicted the Accused under Section 294 (b) and 324 of IPC. This appeal lacks merits and is to be dismissed.

6. Point for Consideration

Whether the judgment of conviction recorded by the learned First Additional District and Sessions Judge (PCR), Thanjavur, in S.S.C.No.72 of 2015, dated 20.01.2017 against the Accused under Section 324 of IPC is perverse warranting interference by this Court as Appellate Court?

7. Heard the arguments of the learned counsel for the Appellant/Accused and the learned Government Advocate (Crl. Side) and perused the evidence of Prosecution witnesses under P.W-1 to P.W-12 and marked documents under Ex.P-1 to Ex.P-13 and the judgment of the learned First Additional District and Sessions Judge, Thanjavur.

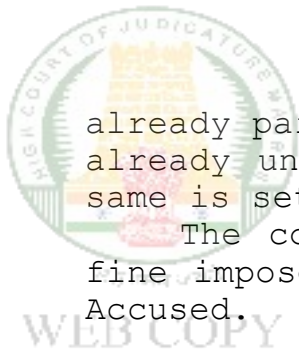


8. On perusal of the evidence of P.W-1 to P.W-12, it is found that the ingredients of Sections 294 (b) IPC is not attracted. The offence attracting Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and Section 3(1)(r)(s) of SC/ST (Prevention of Atrocities) Act (Amendment Act) had not been mentioned by the witnesses particularly P.W-1 to P.W-4. Therefore, the learned Sessions Judge had acquitted the Accused from the charge under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and Section 3(1)(r)(s) of SC/ST (Prevention of Atrocities) Act (Amendment Act). At the same time, the word uttered obscenely is not the word as mentioned in the complaint, in the FIR and as per the charge framed under Section 294(b) IPC. The witnesses had only spoken about using of abusive word but what was the exact word used that could give rise to mental and physical harassment to the witnesses cannot be decided by the Court in the absence of particular abusive word used in the particular situation. When that is not available, the learned Judge convicting the Accused based on the witnesses who have corroborated the evidence does not gain importance or any validity. The victims P.W-1 and P.W-2 had not uttered the exact words. Therefore, the hearsay witnesses uttering the words will not help the Prosecution to convict the Accused. The evidence of Head injury stated by the witnesses P.W-1 and P.W-2 had been corroborated by the evidence of P.W-9-Doctor under Ex.P-9 for P.W-2 and Ex.P-10 for P.W-1. The offence under Section 324 of IPC had been proved through the evidence of P.W-9-Doctor corroborating the evidence of injured victim P.W-1 and P.W-2 through Ex.P.-9 and Ex.P-10 only. In the above circumstances, charge under Section 324 of IPC had been proved for which fine will be sufficient. The conviction under Section 294 (b) of IPC is set aside. The fine imposed under Section 294 (b) of IPC is to be refunded to the Accused. The sentence of imprisonment already undergone by the Accused is set off under Section 428 of Cr.P.C., and treated as sentence of imprisonment under Section 324 of IPC.

9. Point for consideration is answered partly in favour of the Appellant/Accused and against the Respondent/Prosecution. The judgment of conviction recorded by the learned First Additional District and Sessions Judge (PCR) in S.S.C.No.72 of 2015, dated 20.01.2017 against the Accused under Section 324 of IPC is upheld. The sentence imposed under Section 294(b) of IPC is perverse warranting interference by this Court.

In the result, this Criminal Appeal is partly allowed.

The judgment dated 11.04.2017 made in S.S.C.No.72 of 2015 by the learned First Additional District and Sessions Judge, Thanjavur, for the offence under Section 324 of IPC is hereby confirmed only with regard to conviction. The sentence of imprisonment is modified to one that of the payment of fine already paid is sufficient. Therefore the conviction alone is upheld. The sentence of imprisonment imposed under Section 324 IPC is modified as fine



already paid will meet the ends of justice. The period of detention already undergone is sufficient to meet the ends of justice. The same is set off under Section 428 of Cr.P.C.

The conviction under Section 294(b) of IPC is set aside. The fine imposed under Section 294 (b) of IPC is to be refunded to the Accused.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dh

To

- 1.The First Additional District and Sessions Judge(PCR court),
Thanjavur.
2. The Judicial Magistrate, Thiruvaiyaru.
3. The Chief Judicial Magistrate, Thanjavur.
4. The Deputy Superintendent of Police,
Thiruvaiyaru Sub division,
in Budalur Police Station,
Thanjavur District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

judgment made in
CRL.A.(MD)No. 41 of 2017
26.11.2021

nsn(CO)

TR(02.03.2022) 6P 8C