



BAIL SLIP

The Revision Petitioner/Accused Viz. Muthukaruppan, S/o. Chinnadurai, Male, aged about 29 years/ 2017 was released on bail vide order dated 15.03.2017 in CRL.MP(MD).No. 2211 of 2017 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.03.2021

Pronounced on : 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.R.C. (MD) .251 of 2017

Muthukaruppan : Petitioner / 2nd Respondent / accused

Vs.

1.State represented by
The Inspector of Police,
Mathur Police Station,
Pudukkottai District. : Respondent/ 1st Respondent / Complainant
(Crime No.14 of 2010)

2.Rajendran : Respondent / Appellant/ P.W.2

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records of the learned Additional District and Sessions Judge/ Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai in Crl.A.No.6 of 2015 by judgment dated 27.02.2017 reversing the judgment of acquittal, dated 12.11.2014 passed by the learned District Munsif-cum-Judicial Magisterial, Keeranur in C.C.No.159 of 2010 and set aside the judgments of the Courts below and acquit the petitioner.

For Petitioner : Mr.D.Ramesh Kumar
For Respondent : Mr.S.E.Veronica Vincent,
Government Advocate
(Criminal Side), for R1.
: Mr.R.Jegadeeswaran, for R2.

ORDER

The Criminal Revision Case is directed against the judgment passed in Crl.A.No.6 of 2015 dated 27.02.2017 on the file of the Additional District and Sessions Court (Special Court for E.C and NDPS Act Cases) Pudukkottai, reversing the judgment of acquittal made in C.C.No.159 of 2010 dated 12.11.2014 on the file of the District Munsif-cum-Judicial Magisterial, Keeranur.

2.The revision petitioner is the sole accused in C.C.No.159 of 2010, facing the charge under Section 4 of Tamil Nadu Prohibition of



Harassment of Women Act, 2002 on the file of the District Munsif cum Judicial Magistrate, Keeranur.

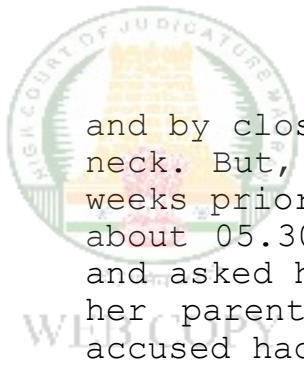
3. The case of the complainant is that on 19.02.2010 at about 17.30 hours, when P.W.1 defacto complainant was returning from school to her home at Sooriyur and at the place near tamarind tree cross at Chokkampatti Oorani, the accused by closing the mouth of the defacto complainant, had tied turmeric thali thread around her neck and that thereby, the accused had harassed her and outraged her modesty. The respondent police, after completion of investigation, has filed the final report for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, against the accused. During trial, the prosecution in order to prove its case, has examined eight witnesses as P.W.1 to P.W.8 and exhibited eight documents as Ex.P.1 to Ex.P.8 and one material object as M.O.1. The 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 on 12.11.2014, by holding that the charge under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act was not proved, acquitted the accused under Section 248(1) Cr.P.C. Aggrieved by the said judgment of acquittal, the State has preferred an appeal in Crl.A.No.6 of 2015 and the learned Additional District and Sessions Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukkottai, upon considering the materials and on hearing the arguments of both sides, has passed the impugned judgment dated 27.02.2017, setting aside the judgment of acquittal passed by the trial Court and convicted the accused for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.10,000/- in default, to undergo six months simple imprisonment. Aggrieved by the said judgment of conviction, the accused has come forward with the present revision.

5. Whether the impugned judgment of conviction made in Crl.A.No.6 of 2015 dated 27.02.2017 on the file of the learned Additional District and Sessions Judge/Presiding Officer, Special Court for NDPS Act Cases, Pudukkottai, is liable to be set aside ? is the point for consideration.

6. Admittedly, P.W.2 Rajendran is the father and P.W.3 Muthulakshmi is the mother of the defacto complainant P.W.1. As rightly pointed out by the Appellate Court, the defacto complainant P.W.1 is the sole witness to the alleged occurrence.

7. It is the case of the prosecution that on 19.02.2010 at about 05.30 pm, when P.W.1 was returning to her home from Government Higher Secondary School, Sooriyur and at the place near Chokkampatti Tamarind Tree, the accused who came in a two wheeler, waylaid P.W.1



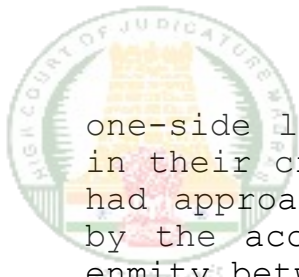
and by closing her mouth, had tied turmeric thali thread around her neck. But, the victim girl/P.W.1 in her evidence would say that two weeks prior to the occurrence, when she was returning from school at about 05.30 pm, the accused, who came in a two wheeler stopped her and asked her as to why she had come late ? and she had replied that her parents are there to question her and that thereafter, the accused had left that place. Thereafter, on 19.02.2010, when she was returning after attending special class at about 05.30 pm, near chokkampatti tamarind tree, the accused had waylaid her and slapped on her cheeks and when she was attempting to close her cheeks with hands, he had tied turmeric thali thread around her neck and when she informed that she would report the incident to her father, the accused had replied that she cannot do anything and left that place. As rightly pointed out by the defence, P.W.1 has not disclosed both the occurrence to her parents.

8.P.W.1 would only say that since the accused had tied thali, she felt ashamed and after reaching home, she had attempted to commit suicide, that after hearing some noise from the tin door of that room, her mother came and saved her and that thereafter, on enquiry, she had informed about the incident.

9.P.W.3, mother of P.W.1 would say in her cross examination that the doors of their house was made up of tin sheet, that she was in the backyard and at that time, she heard some sound of tin sheet door, that she came to the front side and found that the door of that room was under lock and that she had traced out the key and opened the door. As rightly pointed out by the defence, it is not known as to how P.W.1 after entering into that room, had locked the door from outside. Moreover, there is no evidence to show that there was some other entrance to enter in that room. P.W.3 would say that her daughter P.W.1 used to return from school with other boys and girls of that area, but according to P.W.1, on the occurrence day as well as on the previous occurrence day, she was only returning from her school and no other student had accompanied her.

10.No doubt, the defence has attributed motive that he was doing money lending business, that P.W.2 father of P.W.1 and the Panchayat President Palanisamy borrowed loans from the accused and subsequently, refused to repay the same and that thereafter, there existed enmity between the accused, P.W.2's family and the Panchayat President. No doubt, P.W.2 and P.W.4 would admit that the accused was doing money lending business, but P.W.2 would deny the suggestion that he was having loan transactions with the accused.

11.It is pertinent to note that P.W.1 would say in her evidence that the accused and his family were known to her prior to the occurrence. P.W.2 would say that the accused is living at a distance of 300 feet from his house. More particularly, it is nobody's case that the accused and P.W.1 were on love or that the accused was on



one-side love with P.W.1. P.W.1 and P.W.2 would specifically admit in their cross examinations, that neither the accused nor his family had approached the family of P.W.1 with proposal of marrying P.W.1 by the accused. P.W.1 would categorically admit that there was no enmity between her family and the family of the accused prior to the occurrence. It is not the case of P.W.1 that some other persons, who were present in the occurrence place had witnessed the occurrence. As already pointed out, there is no other evidence available to corroborate the version of P.W.1 regarding the occurrence.

12. One other important aspect to be mentioned is that P.W.1 has not at all whispered about the occurrence place in the complaint allegedly given on the next day under Ex.P.1 and she has not mentioned about the particulars of the occurrence place and the other particulars.

13.It is the specific case of the prosecution that P.W.1 visited Mathur Police Station at about 11.00 am on 20.02.2020 and gave a complaint and that P.W.8 the then Sub-Inspector of Police has received the complaint and registered a case in Crime No.14 of 2010 for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

14.According to P.W.2 and P.W.4, after the occurrence, a panchayat was convened in the village and that since the accused has not turned up, the village elder people have directed P.W.2 to take necessary police action. P.W.1 in her cross examination, would say that on the date of occurrence, herself, her parents and important persons of that locality had visited the Police Station at about 11.30 pm, and they have informed about the occurrence to the police, that the police has written the same and got her signature, that the police had obtained her signature as well as her parents in two, three papers and that the police has registered the case on the basis of the signatures obtained in two, three papers from her and her parents.

15.P.W.3 would say that they have visited the Police Station at about 11.30 pm on the date of occurrence. P.W.4, in his evidence, would say that after coming to know about the occurrence, they had convened the panchayat and directed the accused to attend the panchayat and since he has not turned up, they have accompanied P.W.1 to P.W.3 to the Police Station and gave a complaint. P.W.4, in his cross examination, would admit that he was aged 33 years at that time, that some elder people were conducting the panchayat and that he is related to P.W.1. But admittedly, the complaint lodged with the respondent police on the occurrence day at 11.30 pm, was not at all produced by the prosecution for the reasons best known to them.

16.P.W.1 would further say that before visiting the Police Station at about 11.30 pm, they have not prepared any other



complaints, but would admit that a petition was handed over to her mother at Mathur Police Station containing the signatures of P.W.1 and her family members and also Women Self-Help Group Members and that they have prepared a complaint petition and gave it to the District Collector and the local people had accompanied them. She would also admit that when the accused had filed an application for granting of bail, they have filed an intervening petition along with the copy of the complaint given to the District Collector. But, the copy of the complaint sent to the District Collector was not produced.

17.At this juncture, it is necessary to refer to the decision of this Court reported in (2016) 2 MLJ (Crl) 134 relied on by the learned counsel for the accused :

Karuppaiah Vs. State represented by the Inspector of Police, J-3 Guindy Police Station, Law and Order, Chennai- 600 032.

" 14.It is an admitted fact that the occurrence has taken place on 20.05.2013, at about 4.00 p.m. It is equally an admitted fact that Ex.P.1 has come into existence on 21.05.2013, wherein P.W.2 has put his signature as a witness. Since P.W.1 has given clear evidence even during the course of cross-examination to the effect that on the date of occurrence itself he has given an oral complaint and the same has been reduced in writing by a constable, wherein, he put his thumb impression and the same has not been marked on the side of the prosecution, therefore, it is needless to say that the genesis of the case of the prosecution has been purposely suppressed. Further, it is not the evidence of P.W.1 that after occurrence, only on 21.05.2013, he has given a complaint with regard to occurrence. Therefore, the complaint alleged to have been given by P.W.1 on the date of occurrence at about 5.00 p.m, in the police station has been suppressed and since the same has been suppressed, the Court cannot give much utterance either to Ex.P.1 or the evidence given by P.Ws 1 to 5.

15.The trial Court, without considering the vital contradictions found in the case of the prosecution and also without considering that the earlier complaint has been suppressed on the side of the prosecution, erroneously invited convictions and sentences against the appellant/accused. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether the present criminal appeal is liable to be allowed."

18.In the above decision, the witnesses had admitted that they had given an oral complaint on the date of occurrence and the same was reduced to writing, but, the same has not been produced by the prosecution. This Court has observed that the genesis of the case of



the prosecution, has purposely been suppressed.

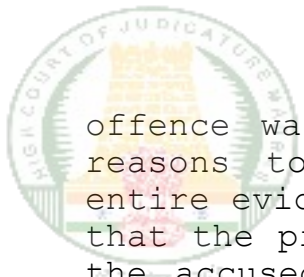
19.The above decision is squarely applicable to the case on hand. In the present case also, P.W.1 and P.W.3 would admit that on the date of occurrence, they had visited the Police Station at about 11.30 pm and gave a complaint. As rightly contended by the defence, in the case on hand also, by suppressing the first complaint and also the complaint lodged to the District Collector, the genesis of the prosecution case has been purposely suppressed.

20.The case of the prosecution is that P.W.7- Investigating Officer had visited the occurrence place at about 12.30 pm and inspected the scene of occurrence in the presence of P.W.5 Karuppaiah and P.W.6 Rassu and prepared the Observation Mahazar under Ex.P.2 and Rough Sketch under Ex.P.5 and that at about 13.00 hours, he recovered the turmeric thali thread, in the presence of same witnesses through Seizure Mahazar under Ex.P.6. But P.W.7, in his cross examination, would say that while he was gathering the particulars of the case from the Sub-Inspector of Police, he was informed that P.W.1 had visited the Police Station and handed over the thali thread and thereafter, he would say that P.W.1 has come to hand over the thali thread. P.W.1 and P.W.3 would say that they had handed over the thali thread and also Thuppata used for attempting to commit suicide by P.W.1 to the police at about 11.30 pm and that she was not aware as to whether the police had taken her signature for handing over the said things.

21.Admittedly, P.W.5 and P.W.6 have not supported the case of the prosecution and hence, they were treated as hostile. P.W.5 and P.W.6 in their corss examination would admit that their signatures found in the Seizure Mahazar were subscribed at the Mathur Police Station as per the requisition of the police and that the signatures were taken to show that they had received thali thread from P.W.1 at the Police Station. But, in the cross examination made by the prosecution, P.W.5 would say that he had subscribed his signatures at the occurrence place.

22.Considering the above, it is highly doubtful as to whether M.O.1 turmeric thali thread was recovered by the Investigating Officer. As rightly contended by the defence, the learned Appellate Judge without considering the evidence of P.W.1 to P.W.3 in proper perspective and also the main fact that the earlier complaint with respect to the occurrence was suppressed and the contradictory evidence with respect to the recovery of M.O.1-thali thread, has come to the decision that the prosecution has proved the charge levelled against the accused.

23.The Appellate Court has not appreciated the evidence adduced in the above case in its proper legal perspective and misread the evidence. Though the trial Court has specifically held that the



offence was not proved, the Appellate Court has not given proper reasons to upset the judgment of acquittal. On considering the entire evidence and other materials, this Court is of the clear view that the prosecution has miserably failed to establish the guilt of the accused beyond reasonable doubt and consequently, the revision case is liable to be allowed and the judgment of acquittal of the trial Court is to be restored.

24.In the result, the revision succeed and stands allowed and the judgment of the conviction passed in Crl.A.No.6 of 2015, dated 27.02.2017 on the file of the Additional District and Sessions Judge/ Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, is hereby set aside. The revision petitioner/accused is hereby acquitted of the charge and the fine amount if any remitted is ordered to be refunded. The bail bond if any, executed by the accused shall stand cancelled.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

- 1.The Additional District and Sessions Judge/ Presiding Officer,
Special Court for EC and NDPS Act Cases, Pudukkottai.
- 2.The District Munsif-cum-Judicial Magistrate,
Keeranur.
- 3.Do-Thro The Chief Judicial Magistrate, Pudukkottai District.
- 4.The Inspector of Police,
Mathur Police Station, Pudukkottai District.
5. The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai
- 6.The Section Officer, (2C)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.JEGADEESWARAN, Advocate (SR-17261[F] dated
23/04/2021)

CRL.R.C. (MD).251 of 2017
20.04.2021

MJ(CO)

KB(13.05.2021) 7P 9C