



BAIL SLIP

The Appellants/ Accused viz.,

1. Mahi @ Mahendiran @ Mahender, M/A 23, S/o.Mohan
2. Sri Karthi @ Sri Karthikeyan, M/A 21, S/o.Kamaraj.
3. Subash, M/A 21, S/o.Subramanian.
4. Ashok Kumar, M/A 22, S/o.Amirthalingam.
5. Diwakar, M/A 21, S/o.Ravi were directed to be released on bail as per order of this Court dated 05.08.2014 in CrI.M.P.No.1 of 2015 in CrI.A.No.411/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.06.2022	Pronounced on : 10.06.2022
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Coram::

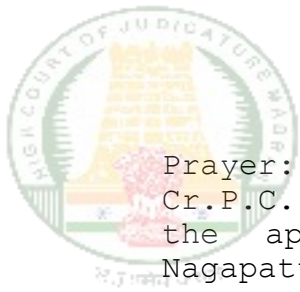
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Appeal No.411 of 2014

1. Mahi @ Mahendiren @ Mahender, M/A 23,
S/o.Mohan.
 2. Sri Karthi @ Sri Karthikeyan, M/A 21,
S/o.Kamaraj.
 3. Subash, M/A 21,
S/o.Subramanian.
 4. Ashok Kumar, M/A 22,
S/o.Amirthalingam.
 5. Diwakar, M/A 21,
S/o.Ravi.
- ...Appellants/Accused

/versus/

1. The State Rep. by its
The Inspector of Police,
Sembanarkoil Police Station,
Nagappattinam.
(Crime No.476 of 2012)
- ...Respondent/Complainant



Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., to set aside the Conviction and Sentence imposed upon the appellants by the Hon'ble Fast Track Mahila Court, Nagapattinam, dated 23.07.2014 in S.C.No.73 of 2013.

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For 1st Appellant : Mr.M.P.Saravanan

For 2nd to 5th Appellants : Mr.G.Saravanabhavan

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

J U D G M E N T

On 31/07/2012 at about 18.15 hrs, Rekha daughter of Karunanithi, a 17 years old lass committed suicide by hanging at her house. The matter was reported to the respondent police by her father on the next day at about 08.00 hrs. Based on his information, the case was registered in Crime No.476/2012 under Section 176 Cr.P.C and investigation was taken up. The investigation revealed that, on the date of incident the victim girl was subjected to harassment by the appellants herein. The appellants 1 to 5 were arrested and charged for offences under Sections 147, 354, 306 of I.P.C and section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act. The charges were denied by the accused/appellants.

2. To prove the charges, the prosecution has examined 13 witnesses and marked 14 documents as exhibits. The trial court found all the 5 accused guilty and were sentenced as below:

Rank of the accused	Conviction under Section	Sentence imposed by the Fast Track Mahila Court, Nagapattinam
A1 to A5	Under Section 147 IPC	To pay a fine of Rs.250/- each in default 3 months S.I.
	Under Section 354 IPC	To undergo 6 months R.I and also to pay a fine of Rs.500/- each in default 6 months S.I
	Under Section 306 IPC	To undergo 5 years R.I and also to pay a fine of Rs.1,000/- each in default to undergo 1 year S.I.
	Under Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act.	To undergo 5 years R.I and also to pay a fine of Rs.50,000/- each in default 1 year S.I.



8. P.W-2 Karthika, classmate of the deceased Rekha, P.W-3 Kaliswaran and P.W-4 Mansoor Alikhan, both cooks of the hotel near the AVC Polytechnic College turned hostile to the prosecution and therefore, there is no corroboration to the P.W-1 evidence regarding the alleged teasing and harassment happened near the College. Likewise, P.W-6, P.W-7, P.W-8 and P.W-9 alleged witnesses for the confession statement and recovery of M.O-1 and M.O-2 two wheelers turned hostile.

9. The trial Court relying upon the deposition of P.W-1, has held that the alleged conversation between P.W-1 and her daughter Rekha amounts to dying declaration and therefore, the guilt of the accused persons found to be proved.

10. The Learned Counsels for the appellants submitted that, the trial court failed to properly appreciate the evidence and law. It failed to consider the fact that the testimony of P.W-1 bristles with embellishments and contrary to the content of the complaint Ex P-1. The trial Court failed to take note of the fact that there was more than 14 hours delay in reporting the matter to the police. There is no plausible explanation for the aberrations found on the left side of the mandible and left side of the chin the body of the victim girl which should have been given due consideration in the light of the fact that the hyoid and thyroid bones found intact.

11. The Learned Counsel further submit that, the saree which alleged to have been used by the victim to hang herself not recovered by the police. Photograph of the SOC not taken, though the Investigating Officer had deposed that, he forwarded the copy of the F.I.R to the Tahsildar, neither the Tahsildar nor the nearby residences were examined to speak about the fact that the victim was found hanging from the fan ceiling. Assailing the trial Court judgment as miscarriage of justice and erroneous, pray for interference.

12. The Learned Government Advocate (Crl.Side) for the respondent in response, submitted that, law does not expect the F.I.R should contain all the facts required for framing charges. There is no inordinate delay in registering the F.I.R. The defacto complainant a rustic villager, not thought of reporting the death of his daughter immediately to the police. This cannot be a ground to doubt the prosecution case. The investigation has unfurled the fact that the victim girl has been teased and harassed soon before her death. The victim girl has reported the matter to her mother before her death. The Trial Court, therefore, rightly took it as dying declaration and convicted the accused. When the evidence of the sole witness inspires the confidence of the Court, lack of corroboration or the witnesses turning turtle due to the influence of the accused persons should not weigh favouring the accused persons.



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13. Points under consideration:-

(i). Whether the testimony of P.W-1 is unassailable to hold the accused persons guilty of the offences under Section 147, 354, 306 I.P.C and Section 4(B) of Tamil Nadu Prohibition of Harassment of Women Act?

(ii). Whether convicting the accused persons solely on the uncorroborated evidence of P.W-1, by terming the alleged statement of the deceased made to P.W-1 will fall within the terms of 'dying declaration' as held by the Trial Court?

14. For easy reference, the Sections under which the appellants were found guilty are extracted below:-

Section 147: Punishment for rioting:-

Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 354: Assault or criminal force to woman with intent to outrage her modesty:-

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.]

Section 306 : Abetment of suicide:-

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Tamil Nadu Prohibition of Harassment of Women Act: Section 4-B : -

(1) If any woman commits suicide and it is shown that soon before her death, she was subjected to harassment by any person or that in respect of her an offence under section 294, 354 or 509 of the Indian Penal Code (Central Act XLV of 1860) was committed, such suicide shall be called the harassment suicide and such person shall be deemed to have abetted the suicide.



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(2) Notwithstanding anything contained in section 4, whoever abets harassment suicide shall be punished with imprisonment of either description for a term which may extend to ten years and with fine which shall not be less than fifty thousand rupees.

15. The 1st charge against these appellants is that they committed offence of Rioting by forming an unlawful assembly near AVC Polytechnic College and causing riot which is punishable under Section 147 of I.P.C. To prove this fact, the prosecution has examined P.W-2, P.W-3 and P.W-4. All these three witnesses turned hostile and no evidence to substantiate this charge.

16. The second charge is that, in continuation of the act of rioting, they outraged the modesty of the victim girl and abused her that, she should not be alive the next day and made lewd comments touching upon her modesty. For this charge also there is no direct evidence. The prosecution solely rely upon the evidence of the P.W-1 who had deposed that the accused person teased her daughter and they made vulgar comments. This part of the deposition is purely an hearsay. Since the person who made the statement is dead, the learned Trial Judge has taken this as the dying declaration. For the very same reason, the Trial Court has relied upon the evidence of P.W.1 to hold the appellants guilty of offences under section 306 of I.P.C and Section 4(B) of the Tamil Nadu Prohibition of Harassment of Women Act.

17. In the deposition of P.W-1, we find that, she has not attributed any specific utterance to any on the accused. Though she claims that, she know all the 5 accused, it a general statement made by the victim to P.W-1 about the incident alleged to have taken place in her College on the earlier part of the day.

18. As per the case of the prosecution, when the victim came to the petty shop of her parents, both her father and mother (P.W-1) were present. P.W-1, in their cross examination admits that, her husband was hearing what her daughter was saying to her. Also, he assured that, he will complaint to the Principal the next day. If that is true, then when her husband gave the complaint nearly 20 hours after the occurrence ought to have mentioned this fact in his complaint. The Trial Court for this omission, has assigned its own reasoning which is not the case of the prosecution witness.

19. The complaint Ex.P-1 which is the earliest documentary evidence in this case does not whisper any thing about the appellants or their act of teasing. Neither the



prosecution could prove the alleged act of molesting the modesty, teasing or harassment through eye witnesses. What the P.W-1 alleged to have heard from her daughter alone is the basis for conviction. To believe the sole testimony of P.W-1 to convict, her testimony is not trust worthy since her testimony far from the content of the F.I.R tampered with improvisation and embellishments.

20. To add, the failure on the part of the investigation to recover the saree alleged to have been used for hanging, non-explanation of the aberrations found on the left side chin and mandible. Unexplained delay in reporting the incident to police gives room to suspect, that the investigation suffers lacunae.

21. In this case, no doubt the doctor has opined that the death was due to hanging. But, the evidence of prosecution does not prove the case of suicide beyond pale of doubt. To convict a person under section 4(B) of the Tamil Nadu Prohibition of Harassment to Women Act, the prosecution has to prove that soon before the death, the victim was subjected to harassment by any person or that in respect of her an offence under Section 294, 354 or 509 I.P.C. The prosecution has failed to prove that soon before the death, Rekha was subjected to harassment by the appellants, by committing the offence under section 354 I.P.C.

22. Even assuming that the victim girl has committed suicide whether it was due to abetment of the accused persons is highly doubtful since the sole evidence of P.W.1 does not pass the test of credibility and admissibility. In the said factual matrix, this Court holds that the finding of the trial Court is baseless and contrary to law. It deserves to be set aside.

23. Accordingly, the Criminal Appeal is Allowed. The conviction and sentence passed by the Hon'ble Fast Track Mahila Court, Nagappattinam, dated 23.07.2014 in S.C.No.73 of 2013 is hereby set aside. The fine amount paid if any, shall be refunded to the appellants. Bail bond executed shall stand discharged.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

bsm



To,

1.The Sessions Judge,
The Fast Track Mahila Court,
Nagapattinam.

2.-do- through The Principal Sessions Judge,
Nagapattinam.

3.The Judicial Magistrate II,
Mayiladuthurai.

4.-do-through The Chief Judicial Magistrate,
Nagapattinam.

5.The Inspector of Police,
Sembanarkoil Police Station,
Nagapattinam.

6.The Superintendent,
Central Prison,
Cuddalore.

7.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.M.P.Saravanan, Advocate SR. No. 34284

+lcc to Mr.G.Saravanabhavan, Advocate SR. No. 35125

Criminal Appeal No.411 of 2014

PL (CO)

PR (07/07/2022)