



BAIL SLIP

The Appellant/Petitioner/Accused namely Bharatharajan, S/o.Thiyagarajan was directed to be released on bail as per the order of this Court dated 20.08.2014 made in M.P.No.1 of 2014 in CRL.RC.No.825 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.825 OF 2014

Bharatharajan

... Petitioner

Versus

The State rep. by
Sub-Inspector of Police,
Thalaignayiru Police Station,
Nagapattinam District.

... Respondent

Prayer: Criminal Revision Petition filed under Section 397 read with Section 401 of Criminal Procedure Code, to call for the records and to set aside the judgment passed by the Mahila Court-cum-Fast Track Court, Nagpattinam in C.A.No.41 of 2011, dated 27.02.2014 by confirming the conviction and partly modified the sentence passed by the learned District Munsif-cum-Judicial Magistrate, Vedaranyam in C.C.No.14 of 2009, dated 01.08.2011.

For Petitioner : Mr.G.Dhanaraj
for Mr.T.P.Sekar

For Respondent : L.A.J.Selvam
Government Advocate
(Criminal Side)



ORDER

This Criminal Revision Case in CrI.R.C.No.825 of 2014 is filed by petitioner/accused, aggrieved by the judgment, dated 01.08.2011 of the learned District Munsif-cum-Judicial Magistrate, Vedaranyam in C.C.No.14 of 2009, thereby, convicting the petitioner for the offence under Section 448 of Indian Penal Code and imposing a sentence of six months Simple Imprisonment and fine of Rs.500/- and in default, to undergo two months Simple Imprisonment, under Section 506(ii) of Indian Penal Code and to undergo six months Simple Imprisonment and fine of Rs.500/- and in default of payment of fine, to undergo another two months Simple Imprisonment; under Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act, 1998 and to undergo two years Simple Imprisonment and Rs.10,000/- fine and in default of payment of fine, to undergo two months Simple Imprisonment and the judgment of the learned Mahila Court-cum-Fast Track Court, Nagapattinam, dated 27.02.2014 in CrI.A.No.41 of 2011, thereby, confirming the conviction and sentence imposed by the Trial Court except to reduce the imprisonment of two years, in respect of the offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1998 to one year Simple Imprisonment.

2. On 18.11.2008, P.W.1, Renuka appeared before the Thalaignayiru Police Station and lodged a complaint stating that when she was in her uncle's house, on 17.11.2008 at about 2.30 P.M, the petitioner/accused threatened her on knife point and made her to remove her 'Dhavani' (dupatta) and when she further attempted to remove her jacket, she fainted and therefore, she was taken to water pipe in the front side of the house and at that time, her mother came and she was rescued. On the said complaint, P.W.7, Sub-Inspector of Police registered a case under Sections 354, 506(ii) of Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act, 1998 and took up the case for investigation and filed a final report, proposing the petitioner/accused guilty of the offences.

3. The case was taken on file by the learned District Munsif-cum-Judicial Magistrate, Vedaranyam in C.C.No.14 of 2009 and upon issue of summons and furnishing of copies under Section 207 of Code of Criminal Procedure, the petitioner/accused denied the charges and stood trial. Thereafter, the prosecution examined P.Ws.1 to 7 and marked Exs.P-1 to P-4. Upon being questioned about adverse evidence and circumstances on record under Section 313 of Code of Criminal Procedure, the accused denied the same as false. Thereafter, no oral or documentary evidence was let in on behalf of the defence.

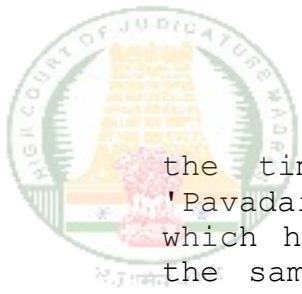


4. The Trial Court, therefore, proceeded to hear the learned Assistant Public Prosecutor for the prosecutrix and the learned Counsel for the accused and by a judgment, dated 01.08.2011, found that on the basis of the evidence of the victim, namely P.W.1 and the documents marked on behalf of the prosecution, the case of the prosecution is believable. The Trial Court further found that the contradictions mentioned by the accused were not proved by questioning the investigating officer and therefore rejected the defence of the accused and convicted the petitioner/accused for the offence under Sections 448, 506(ii) of Indian Penal Code and Section 354 r/w 4 of Tamil Nadu Prohibition of Woman Harassment Act, 1998 and sentenced the petitioner/accused as aforesaid.

5. Aggrieved by the same, the petitioner/accused filed Crl.A.No.41 of 2011 and the Mahila Court-cum-Fast Track Court, Nagapattinam, by a judgment, dated 27.02.2014, after independently appraising the evidence on record, upon considering the evidence of P.Ws.1 to 5, held that the prosecution has proved the offence beyond any doubt and confirmed the conviction of the Trial Court and modified only the sentence in respect of the offence under Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act, 1998 from a period of two years to that of one year. Aggrieved by the same, the present Revision Case is laid before this Court.

6. Mr.G.Dhanaraj, learned Counsel representing learned Counsel for the petitioner, would submit that in this case, the contradiction in the evidence of the prosecution not just relate to the Section 161 Cr.P.C., statements given by the witnesses, but, are glaring and material contradictions in the evidence before the Court and the documents marked and therefore, the Trial Court committed a grave illegality in brushing aside as if the contradictions were not put to the investigating officer, namely P.W.7. He would submit that P.W.1, in her evidence, stated that the incident had happened when she was in the front yard of the house, whereas, in the F.I.R, she mentioned that she was inside the house.

7. While, in the evidence, she had deposed that she fainted and that she was dragged outside to the pipe, the same was not the case in the earlier statement made in the First Information Report. Further, the other witnesses, namely P.Ws.3, 4 and 5 have clearly deposed about the fact that the petitioner/accused was serving food in the wedding and the previous enmity between the two families was also spoken to by the said witnesses. Therefore, the case of the prosecution becomes unbelievable even by the statement of P.Ws.3 to 5 itself. Further, P.W.6 clearly deposed before the Court that P.W.1 was wearing a Chudidhar at



the time of the incident, while, P.W.1 deposed about the 'Pavadai-Dhavani'. Therefore, this material contradiction, which has been pointed out by the accused and when considering the same on merits, the Trial Court simply brushed aside the same by giving a reason that these contradictions were not put to investigating officer. He would submit that these are not contradictions, which are based on Section 161 Cr.P.C., statements, which would make it mandatory to be put to the investigating officer. The learned Counsel for the petitioner would further submit that even the first Appellate Court did not consider any of the said defence and merely by extracting the statements of P.Ws.1 to 5, the Appellate Court had confirmed the conviction and sentence. He would, therefore, pray that this is a case for interference by this Court in exercise of the powers in the revisional jurisdiction.

8. Opposing the said submissions, Mr.L.A.J.Selvam, the learned Government Advocate (Criminal Side) would submit that in this case, P.W.1, the victim has deposed about the harassment meted out to her. The contradictions are not in such a manner so as to discredit the entire evidence and therefore, the Trial Court as well as the first Appellate Court had rightly convicted the petitioner/accused. However, he would, on instructions, submit that P.W.1 has filed the affidavit before this Court stating that originally, she had lodged a complaint in Cr.No.345 of 2008 and she also appeared as P.W.1 and testified before the Court. However, she had moved on in life thereafter and married one Balaji of Karuppambulam village and lived with him from 2010 to 2016 and after 2016, her husband Balaji died and she has come back to her own village and is presently living peacefully along with her child in her parents' house. In the interregnum, the enmity between both the families has faded away and they are in good and proper relationship. The petitioner/accused is related to her as cousin brother and both the families are now amicably living in the village and she had prayed that she wants peace by amicable resolution and compromise in the matter and she requests that this Court should accept the compromise and take into consideration the state of affairs between the both the families while passing orders.

9. I have considered the rival submissions made on the either side and the affidavit filed on behalf of the victim. I am in agreement with the learned Counsel appearing for the petitioner that when the accused has raised several important and clinching defences in the nature of material contradictions in the evidence, all the contradictions are brushed aside by the Trial Court by one sentence that they were not put to the investigating officer. Only if there is any improvement or contrary statements made by the witnesses than which are made in



the Section 161 Cr.P.C., statements, it is necessary for the accused side to cross-examine the investigating officer and bring on record the contradictions.

WEB COPY

10. However, in this case, the contradiction is between the depositions and the F.I.R. The F.I.R is already marked as Ex.P3 and therefore, the contradiction as to the place of occurrence is established by the accused. Similarly, even there is contradiction between the witnesses regarding the dress which was worn by P.W.1; and as to the fact whether she fainted or not; and the prosecution witnesses themselves have spoken about the fact that the accused was serving food in the wedding, arising doubt as to the very prosecution case itself.

11. This apart, even though in matters relating to the offence against woman, normally this Court will not render a verdict based on a subsequent compromise, but, the affidavit filed by the victim whereby she has stated that she is completely forgiven and forgotten about the incident and have moved on in her life and presently, she, being a widow, living in the same village and both families living at peace, the same is also taken into consideration. Therefore, considering the error committed by the Trial Court as well as the first Appellate Court coupled with the affidavit filed before this Court by P.W.1, I hold that the conviction of the petitioner/accused is unsustainable and the petitioner/accused is entitled for the benefit of doubt.

12. Therefore, the judgment of the learned District Munsif-cum-Judicial Magistrate, Vedaranyam in C.C.No.14 of 2009, dated 01.08.2011 and the judgment of the Mahila Court-cum-Fast Track Court, Nagpattinam in C.A.No.41 of 2011, dated 27.02.2014 are set aside. The accused is acquitted of all the charges. Fine amount, if any, paid by him is ordered to be refunded to him.

13. The Criminal Revision Case is allowed accordingly.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

grs



1. The Mahila Court-cum-Fast Track Court,
Nagpattinam.

- +1cc to Mr.T.P.Sekar, Advocate, S.R.No.4396

PCH (CO)
RLP (08/02/2022)