



CrI.R.C.No.747 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2022

PRONOUNCED ON: 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.R.C.No.747 of 2021

and

CrI.M.P.No.11483 of 2021

S.Shankar @ Saravanan

...

Petitioner

/vs/

State rep.by Inspector of Police,
AWPS – Tiruppur South Police Station,
Tiruppur City.
(Crime No.8 of 2020)

...

Respondent

Prayer : Criminal Revision Case has been filed under Sections 397 & 401 of Criminal Procedure Code, to set aside the conviction and sentence passed by the learned Principal Sessions Judge, Tiruppur in C.A.No.39 of 2021 dated 12.07.2021 reversing the judgment of the learned Additional Mahila Court at Magisterial Level, Tiruppur in C.C.No.610 of 2020 dated 29.04.2021 and allow this criminal revision petition.

For Petitioner

...

Mr.J.Franklin

For Respondent

...

Mr.V.Meganathan
Govt. Advocate (CrI.side)



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ORDER

This criminal revision case has been filed against the judgment of conviction and sentence passed in C.A.No.39 of 2021 dated 12.07.2021 by Principal Sessions Judge, Tiruppur, confirming partly the conviction and sentence passed in C.C.No.610 of 2020 dated 29.04.2021 by Additional Mahila Court at Magisterial Level, Tiruppur.

2.The respondent/Inspector of Police, All Women Police Station Tiruppur, prosecuted the revision petitioner/accused in Crime No.8 of 2020 for the offences punishable under Sections 354-A(1)(ii) and 354-B IPC.

3.The case of the prosecution is that Kavitha (PW1) is the resident of Pazhavanchipalayam. On 17.08.2020 at about 23 hours, while she was returning from her sister's house, in the street, the revision petitioner/accused pulled her Nighty due to which she fell down, thereafter, he placed his hands on her untouchable part. On hearing her voice, her husband Suresh came out from the house, on seeing him, the accused ran away from the place of occurrence. Thereafter, on 19.08.2020, she gave a complaint before the



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Tiruppur South All Women Police Station. On receiving the complaint, Ayammal/Inspector of Police (PW8) registered a case in Crime No.8 of 2020 and after investigation, filed charge sheet against the accused for the offences punishable under Sections 354-A)(1) (ii) and 354 B IPC.

4.The trial Court, after trial, found the accused guilty for the offence under Section 354-A (354-A) (1)(ii) IPC and thereby convicted and sentenced to undergo three years of rigorous imprisonment and for the offence punishable under Section 354-B IPC, convicted and sentenced to undergo three years of rigorous imprisonment and imposed a fine of Rs.1000/- in default sentenced to undergo one week simple imprisonment. Aggrieved by the judgment of the trial Court, the revision petitioner filed the appeal in C.A.No.39 of 2021 before the Principal Sessions Judge, Tiruppur. The appellate Court modified the conviction and sentence of the trial Court for the offence under Section 354 A (1)(ii) IPC and set aside the conviction and sentence of the trial Court for the offence under Section 354-B IPC. Aggrieved against the same, the present criminal revision petition has been filed.



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5.The learned counsel for the revision petitioner/accused submitted that the appellate Court has not properly considered the prosecution witnesses. No case is made out against the accused person. On the date of occurrence, the revision petitioner/accused celebrated his birthday with his friends. The defacto complainant came out of her house and abused the revision petitioner with filthy language, thereafter, filed the complaint falsely against the revision petitioner/accused. The alleged occurrence, as per the prosecution, was on 17.08.2020 at about 11.00 p.m. and the complaint was given only on 19.08.2020. There is a delay in lodging the complaint, which was not properly explained by the prosecution witnesses. The prosecution has not considered the defence raised by the revision petitioner/accused. Thus, pleaded to allow the criminal revision petition and to set aside the conviction and sentence imposed by the trial Court and the appellate Court.

6.The learned Government Advocate (Crl.side) for the respondent submitted that the prosecution examined eight witnesses and marked six



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documents. Kavitha (PW1), who is the complainant and victim women, deposed before the trial Court clearly about the sexual harassment made by the revision petitioner/accused. Her evidence was supported by the evidence of Suresh (PW2) husband of PW1, Ramesh (PW3), Manikandan (PW4), Prakash (PW5), Selladurai (PW6), Balamani (PW7). Kavitha (PW1) alone spoke about the occurrence and other witnesses supported her version. Therefore, the prosecution case is sufficiently proved. Therefore, the trial Court and the first appellate Court rightly convicted and sentenced the accused and there is no reason to interfere with the findings of the Courts below and thus, pleaded to dismiss the criminal revision case.

7.Heard the learned counsel for the parties and evidence on record was perused.

8.The substance of the prosecution case against the revision petitioner/accused is, on 17.08.2020 at about 11.00 p.m. when Kavitha (PW1) was returning from her sister's house, in the street, the revision



petitioner/accused pulled her Nighty and placed his hands on her untouchable part of the body. Hence, he was prosecuted by the respondent/Inspector of Police (PW8) for the offences punishable under Sections 354(A)(1)(ii) and 354-B IPC.

9.In the trial Court, prosecution examined eight witnesses namely Kavitha (PW1), Suresh (PW2), Ramesh (PW3), Manikandan (PW4), Prakash (PW5), Selladurai (PW6), Balamani (PW7) and Ayyammal/Inspector of police (PW8) and filed six documents. Among the eight witnesses, Kavitha (PW1) alone was speaking about the occurrence and others came to know about the occurrence only through Kavitha (PW1). Ramesh (PW3) and Prakash (PW5) were witnesses to observation mahazer Exs.P2 & P3.

10.I have gone through the evidence of Kavitha (PW1). In the evidence, Kavitha (PW1) stated that on the date of occurrence, her sister's husband was suffering from some health problem, so, she went to her house



at 10.00 p.m. When she was returning to her home, on the way, the revision petitioner/accused dashed her, on questioning his action, he sought excuse.

Further, when she moved, the revision petitioner/accused pulled her Nighty, she fell down, thereafter, he placed his hands on her untouchable part. On hearing her voice, her husband Suresh (PW2), and Manikandan (PW4) came to the occurrence place, she disclosed about the incident. Therefore, PW2, PW4 ought not have witnessed the occurrence. After consulting her family members, on the next day, she gave a complaint Ex.P1. From her evidence, the ingredients required to make out a case under Sections 354-B IPC is not fulfilled. The appellate Court has set aside the conviction and sentence imposed by the trial Court for the offence under Section 354-B IPC, against which, the state has not preferred any appeal. Therefore, the finding of the appellate Court for the offence under Section 354-B IPC became final.

11.Next, I have considered, whether the evidence is sufficient to hold the accused guilty for the offence under Section 354-A(1)(ii) IPC. For proper appreciation, section 354-A(1)(ii) IPC runs as follows:

2 /354A. Sexual harassment and



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punishment for sexual harassment.—(1) Aman committing any of the following acts—

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

12.From the above provision to attract 354-A(1)(ii) IPC, there should



be a demand or request for sexual favours. On fact, Kavitha (PW1) did not state in her evidence that the revision petitioner/accused made a demand or request her for sexual favours. She deposed that he pulled her Nighty and fell down and placed his hands on her untouchable part. Further, in her cross examination, she stated that she sustained injury on her hand and also stated this fact to the police enquiry. But she was not referred by the police for treatment and no medical evidence was placed to support her evidence that she sustained injury on her hand. This raised a doubt about the truthfulness of her evidence. Under these circumstances, it is unsafe to act upon the uncorroborated evidence of Kavitha (PW1).

13.A moral conviction regarding the guilt of an individual has no place in criminal jurisprudence. A Court of law is to get the truth from the legal evidence placed before it. On fact, there is no clear evidence against the revision petitioner/accused to show that he pulled Kavitha's (PW1) Nighty and she fell down, after that he placed his hands on her untouchable part of



the body. The evidence of Kavitha(PW1) is also unbelievable for the reason that she deposed that she sustained injury at the time of occurrence and but she had not taken any medical treatment. In a criminal trial, an accused person starts with presumption of innocence in his favour and the presumption holds the field till the prosecution succeeds in establishing the guilt of the accused beyond all reasonable doubts.

14.In this case, there is no sufficient evidence to find guilt of the accused for the offence under Section 354-A (1)(ii) IPC. Hence, the revision petitioner/accused is entitled for acquittal. The trial Court has not properly considered the evidence of prosecution witnesses and found the accused guilty without sufficient evidence, which was confirmed by the appellate Court, is liable to be set aside. Accordingly, the criminal revision case is allowed and the conviction and sentence imposed by the trial Court for the offences under Section 354-A(1)(ii) IPC, which was confirmed by the appellate Court is hereby set aside. Fine amount, if any, paid by the revision petitioner /accused shall be refunded and the accused is on bail, the bail bond executed by the accused is cancelled. Consequently, connected



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miscellaneous is closed.

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Index : Yes/No

Internet : Yes/No

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To

- 1.The Principal Sessions Judge,
Tiruppur.
2. The Additional Mahila Court,
at Magisterial Level, Tiruppur.
- 3.State rep.by Inspector of Police,
AWPS – Tiruppur South Police Station,
Tiruppur City.
(Crime No.8 of 2020)
- 4.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM ,J.

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Pre-delivery order made in
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