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Crl.RC No.1604 of 2017



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.02.2023**

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.R.C. No.1604 of 2017

Siva @ Sivakumar

... Petitioner

Vs.

The State represented by its
The Sub-Inspector of Police,
Kitchiapalayam Police Station.
Crime No.200/2014

... Respondent

Criminal Revision Petition is filed under Section 397 & 401 of Criminal Procedure Code, to set aside the Judgment in C.A.No.169 of 2015 dated 21.08.2017 on the file of the Principal Sessions Judge, Salem confirmed by the Judicial Magistrate, Additional Mahila Court, Salem dated 06.04.2017 in C.C. No.78 of 2014 and call for the records and acquit the petitioner from all the charge.

For Petitioner : Mr.A.Bakkiyalakshmi
For Respondent : Mr.R.Murthi
Government Advocate



ORDER

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2. The case of the prosecution as it appears from the complaint is that on 15.06.2014 at about 11.45 p.m. when the *de facto* complainant was lying with her mother and children in front of her house, the petitioner came and pulled her saree and thereby committed offence under Section 354(A) and (B) IPC and Section 4 of Tamil Nadu Women Harassment Act. The petitioner had also threatened the *de facto* complainant with dire consequences and committed the offence under Section 506(ii) IPC. After charge sheet was filed and complying all the legal mandates, the learned trial Judge found the accused guilty for the offences under Section 354 (B) & 506(i) IPC and the accused was convicted to undergo three years Simple Imprisonment and a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment for offence punishable under Section 354(B) IPC and convicted and sentenced to undergo one year rigorous imprisonment and fine of Rs.1,000/- in default to undergo three months simple imprisonment for the offence under Section 506(i) IPC.



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3. When the accused challenged the same by way preferring an appeal the appellate Court modified the sentence by finding the accused guilty for the offence under Section 354 IPC and 506(i) IPC instead of Section 354(B) and 506(i) IPC. For the offence under Section 354 IPC the accused was sentenced to undergo Rigorous Imprisonment for one year and to pay a fine for Rs.1,000/- in default to undergo Rigorous Imprisonment for a period of three months and for the offence under Section 506(i) IPC the accused was sentenced to undergo one year rigorous imprisonment and fine of Rs.1,000/- in default to undergo three months Simple Imprisonment

4. The learned counsel for the petitioner submitted that the Courts below have not appreciated the evidence in a proper manner; the accused had been found guilty for the offence under Section 506(i) IPC without any ingredients to make out the alleged offence; the contradictions in the material particulars of the prosecution witnesses were not taken note.

5. The learned Government Advocate (Crl. Side) submitted that the *de facto* complainant was examined as P.W.1 and she is the victim; the evidence deposed by her would show that the accused had committed the



offence; there are other eye witnesses who would also witness the occurrence and they have been examined as P.W.4 and P.W.5; the evidence of P.W.5 corroborate the evidence of P.W.1 and hence the Courts have rightly found the accused guilty for the alleged offence.

6. The *de facto* complainant was examined as P.W.1. She had stated in her evidence that on 15.06.2014 at about 11.45 p.m. when she was sleeping in front of her residence, the accused came towards her and pulled her saree. The accused did not have any enmity with P.W.1 and hence the evidence of P.W.1 cannot be considered as a motivated one. Apart from P.W.1 there are eye witnesses who were examined as P.W.4 and P.W.5. They have also seen the occurrence and their evidence corroborate the evidence of P.W.1. Even before the occurrence the accused was in the habit of causing such harassment to P.W.1 during nights. P.W.1 and other witnesses are the residents of same area and they are in the habit of sleeping in front of their houses. The accused, taking this as an advantage, was giving such sexual harassment to P.W.1 and on the day of occurrence also he misbehaved and pulled the saree of P.W.1 during midnight.

7. Even though the trial Judge had found the accused guilty for the



accused under Section 354(B) IPC, the learned appellate Judge had altered the provision from Section 354 (B) to 354 IPC. Since one of the essential ingredients to make out an offence under Section 354(B) is disrobing, the learned appellate Judge had proceeded to modify the guilt of the accused for the offence under Section 354 IPC instead of 354 (B) IPC. Even in the evidence of P.W.1 she had not stated that she was disrobed. Her categorical evidence is that her saree was pulled and it was clearly an act done to outrage the modesty of a woman. The accused being a man of 35 years old at the time of occurrence is well aware of his act that it would cause shame and fear in the mind of a woman.

8. The learned appellate Judge had rightly found the accused guilty for the offence under Section 354 IPC on the basis of the materials available on record and I find no reason to interfere the same. So far as the offence under Section 506 (i) IPC is concerned, I do not find enough ingredients except some words uttered by the petitioner at the time of occurrence. Since the victim woke up and shouted, the accused uttered the words of threat out of fear. Mere words uttered by the accused cannot be considered as a serious threat to the life and property of P.W.1. Hence I feel



Crl.RC No.1604 of 2023

the accused can be acquitted for the offence under Section 506 (i) IPC.

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9. Accordingly, this Criminal Revision Petition is partly allowed and the judgment dated 21.08.2017 made in C.A. No.169 of 2015 by the learned Principal Sessions Judge, Salem with regard to the finding of the guilt of the accused for the offence under Section 354 IPC is confirmed and guilt of the accused for the offence under Section 506(i) IPC is hereby set aside.

13.02.2023

Index : Yes/No
Speaking Order : Yes / No
bkn



Crl.RC No.1604 of 2020

To:

WEB COPY

1. The Sub-Inspector of Police,
Kitchiapalayam Police Station.
2. The Principal Sessions Judge, Salem.
3. The Judicial Magistrate, Additional Mahila Court, Salem .
4. The Public Prosecutor,
High Court, Madras.



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Crl.RC No.1604 of 2017

R.N.MANJULA, J.,

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Crl.R.C No.1604 of 2017

13.02.2023