



Crl.A.(MD).No.107 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 26.09.2023

Pronounced on: 23 .11.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Criminal Appeal (MD). No.107 of 2016

Fathima

.. Appellant

Versus

1.State through the Inspector of Police
B5 South Gate Police Station,
Madurai District.
(In Crime No.975 of 2012)

2.Rahmathullah
3.Mohamed Abdul Kadhar
4.Mohamed Yusuf
5.Mohamed Ali Jinnah
6.T.K.Shahul Hameed
7.A.Shahul Hameed

.. Respondents

Criminal Appeal filed under Section 372 r/w. 29 of Criminal Amenment Act, to call for the records in S.C.No.344 of 2013 dated 09.02.2016 on the file of the District and Sessions Court, (Mahila) Madurai and set aside the orders passed therein.

For Appellant

: Mr. S.M.A. Jinnah

For R1

: Mr. M. Sakthikumar

Government Advocate (Crl.Side)

For R2 to R7

: Mr.K.Prabhu



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JUDGMENT

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The Criminal Appeal is filed against the judgment passed in S.C. No. 344 of 2013 on the file of the District and Sessions Court, (Mahila), Madurai dated 09.02.2016 whereby the trial Court acquitted the accused from the charges levelled against them. As against the acquittal judgment, the present appeal has been filed by the defacto complainant/victim/P.W.1.

2. The case of the prosecution is that the defacto complainant is the wife of the first accused and she was residing separately. The accused 2 to 6 are in-laws of the victim and the 7th accused is relative of the first accused. The accused 1 to 6 are residing in a joint family at Puliyanakudi. The 7th accused is residing at Madurai. When the first accused along with victim were residing at Singapore, the first accused left the victim at Singapore and came to India and then, married second wife and thereby, the victim gave a complaint before the Puliyanakudi Police Station. Due to that, there was a enmity between two families. While so, on 10.12.2012, at about 10.30 a.m., all the accused went to the house of victim at Palli Palayam Road, Madurai Town. At that time, the door was locked. They broke open the lock, trespassed into the house of the victim and assaulted the witnesses Kadhar and Fathima Kani, who were inside the house and abused her with obscene words. On coming to know about the same, the appellant came to the house immediately. At that time, all the



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accused assaulted the victim and abused her with obscene words and she sustained contusion injuries. The accused also damaged the computer and other things worth about Rs.7,000/-. Further the first accused stated abused her by stating “நீ செத்தாத்தாண்டி நான் நிம்மதியா இரண்டாவது மனைவியோட வாழ முடியும்” and also caused criminal intimidation by showing knife. It is stated that at that time, the 7th accused assaulted the witness Kalithu Ibnu. The second and third accused outraged the modesty of the appellant by dragging her jacket and torn it. Thus, the accused 1 to 7 formed unlawful assembly and committed the above said offences.

(i) In this context, P.W.1 had given complaint/Ex.P1 before the police and P.W.11/Sub-Inspector of Police has registered FIR/Ex.P11 in Crime No. 975 of 2012 for the offences under sections 147, 294(b), 323, 452, 506(ii) of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. After registration of FIR, P.W.12 has taken over the case for investigation, examined some witnesses and recorded their statements. Thereafter, P.W.13 has taken over the case for further investigation and after examining the witnesses and collecting the documents, he filed final report against the accused for the offences under sections 147, 294(b), 323, 452, 506(ii) of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act. Thereafter, the copies of



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records relied on by the prosecution were furnished to the accused under section 207 of Cr.P.C. Subsequently, the case was committed to the Principal Sessions Court, Madurai and the Principal Sessions Court in turn made over it to Mahila Court Madurai in S.C. No. 344 of 2013.

3. After hearing both sides, the trial Court framed the charges as against the first accused under sections 147, 452, 294(b), 323, 506(i), 506(ii), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act. As against accused 2 to 6 charges under section 147, 452, 294(b), 323, 506(i), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act were framed. As against the seventh accused charges under section 147, 452, 294(b), 323 (2 counts), 506(i), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act were framed. The above said charges were read over and explained to the accused and they denied the charges.

4. During the trial, the prosecution has examined witnesses P.W.1 to 13 and marked Ex.P1 to P27 and also marked M.O.1 to 3. On the side of the defence, D.W.1 to 3 were examined but no documents were marked. After



completion of prosecution side evidences, the accused were examined under section 313(b) of Cr.P.C., with regard to the incriminating circumstances found against them and the same were denied by them as false.

5. After evaluating the oral and documentary evidences adduced on either side, the trial Court has acquitted the accused from all the charges levelled against them. As against the said acquittal and judgment passed by the trial Court, the present appeal has been preferred by the victim/P.W.1 on the following grounds:

1.The judgment of the trial Court acquitting the accused by ignoring the material evidence brought on record by the prosecution and taking into consideration immaterial and irrelevant factors, into consideration is not sustainable.

2. The learned trial court has failed to take into consideration that PW-1, PW-2, PW-3 and PW-6 are occurrence witness and they categorically explained the occurrence on 08.12.2012, including the involvement of the Respondent Nos.2 to 7.

3. That the learned trial court ought to have considered that the evidence of PW-1 clearly deposed against the accused that they trespassed into the dwelling house and assaulted her with iron rod, assaulted the PW-2 thereafter



pushed the PW-2 into a separate room, they caused damage to the PW-1's Computer, and all house hold articles. It is proved by the material objects MO-1 and MO-2.

4. That the learned trial court ought to have considered that MO-3 Arivalmanai which was used by Accused No.1, was recovered from the Accused No.1 on the basis of the confession. Further, the evidence of PW-9 and PW-10 clearly disclosed the confession through Ex. P-7.

5. That the learned trial court ought to have considered that the evidence of PW-1, PW-2, PW-3 and PW-6 corroborate the evidence of PW-1 but the learned trial court ignore the same and erroneously acquitted the Respondent Nos. 2 to 7 which is contrary to law and justice.

6. That the learned trial court erroneously brushed aside the evidence of PW-3 on the ground that he has not put his signature in the complaint, which is contrary to law and justice.

7. That the learned trial court ought to have considered that the cross examination of PW-3 disclosed that he has sustained bleeding injury and he was attacked by all the accused. But the learned trial court erroneously disbelieved the evidence of PW-3 as he has not taken treatment.

8. That the learned trial court ought to have considered the evidence of PW-11 who is the Sub-Inspector of Police. After the occurrence he received



the information and registered FIR in Ex.1 without any delay and registered case.

9. That the trial court ought to considered the evidence of PW1. Since she is a victim women the evidence of the PW1 alone is sufficient to convict the accused. Her evidence disclose that she was ill treated and molested in public place but it was simply brushed aside.

10. That the learned trial court ought to have ignored the deposition of DW-1 to DW-3 as false and fabricated theory.

6. The learned counsel appearing for the appellant would contend that A1 is the husband of appellant/victim. Accused 2 to 6 are in-laws and the 7th accused is close relative of A1. On 10.12.2012 when the victim was not in the house, all the accused broke open the lock, trespassed into the house and abused her with obscene words, assaulted and caused criminal intimidation. They have also damaged the computer and other things worth about Rs.7,000/- and therefore, they were charged for the offences under sections 147, 294(b), 323, 452, 506(ii) of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

(i) In order to prove the charges levelled against the accused, the prosecution have examined witnesses P.W.1 to 13 and marked Ex.P1 to P27



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and also marked M.O.1 to 3. P.W.1 is the defacto complainant and she deposited about the manner of occurrence and the complaint lodged by her. The other witnesses have also categorically deposited about the occurrence. P.W. 8/Doctor has deposited about the injuries sustained by the victim. P.W.11 deposited about the registration of FIR. P.W.12 to 13 have deposited about the investigation done by them. As per the investigation, a prima facie case was made out against the accused for the offences complained of and thereby, filed final report.

(ii) The learned counsel for the appellant further contended that, all the accused formed themselves into an unlawful assembly, broke open the door and committed the offence and thereby, the prosecution has amply proved the charges levelled against them, but the trial Court, without considering the evidences adduced by the prosecution and without analysing the evidences in a proper perspective manner, erroneously acquitted the accused. The trial Court failed to consider the evidence of P.W.1, 2, 3 and 6 who are the eye witnesses and P.W.2 has deposited about the damages caused by the accused. But the trial Court failed to consider the above said aspects and erroneously acquitted the accused. Therefore, the judgment of trial Court is liable to be set aside and the accused are liable to be punished according to law.

7. The learned Government Advocate (CrI.Side) appearing for the State

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has supported the case of the appellant and reiterated the arguments of the appellant.

8. The learned counsel appearing for the respondents 2 to 7 would contend that there is a family dispute between the first accused and the defacto complainant and thereby, she gave a false complaint as against her husband and in-laws only to harass them. There was no occurrence happened as alleged by the prosecution. The prosecution examined witnesses P.W.1 to 13 and marked Ex.P1 to P27 and also marked M.O.1 to 3. On the side of the defence D.W.1 to 3 were examined but no document was marked. The evidence of prosecution witnesses are not cogent and filled with doubts and thereby, the trial Court has correctly acquitted the accused. Further D.W.1 has deposed about the purchase of house in his name and also marked the title deeds stated about the talks between the victim and her sister's husband and the previous happenings in the family. D.W.2 has deposed about the previous happenings in the family of the victim and the accused. The 7th accused was examined as D.W.3 and he deposed that his name was wrongly included in this case and already a case has been filed as against the Inspector of Police through private complaint, thereby, a false case has been foisted against 7th accused. Further, he deposed that there is no nexus between the 7th accused and this case. After taking into consideration of the evidences adduced on both sides, the trial Court has correctly acquitted the accused by holding that the prosecution has



failed to prove the charges levelled against the accused. In fact the false complaint has been foisted against the accused, due to family dispute between the victim and the accused. Therefore, the appeal is liable to be dismissed.

9. This Court has heard both sides and perused the records. Upon hearing both sides and perusing the records, the judgment of the trial Court and grounds of appeal, the point for determination in this appeal is whether the prosecution has proved the charges as against the first accused under sections 147, 452, 294(b), 323, 506(i), 506(ii), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act, charges against accused 2 to 6 under section 147, 452, 294(b), 323, 506(i), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act and against the seventh accused charges under section 147, 452, 294(b), 323(2 counts), 506(i), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, beyond reasonable doubt?

10. The case of the prosecution is that the defacto complainant is wife of the first accused and she was residing separately. The accused 2 to 6 are in-laws of the victim and the 7th accused is relative of the first accused. The



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accused 1 to 6 are residing in a joint family at Puliyanakudi. The 7th accused is residing at Madurai. When the first accused along with victim were residing at Singapore, the first accused left the victim at Singapore and came to India and contracted a second marriage, thereby, the victim gave a complaint before the Puliyanakudi Police Station. Due to that, there was a enmity between two families. While so, on 10.12.2012, at about 10.30 a.m., all the accused went to the house of victim at Palli Palayam Road, Madurai Town. At that time, the door was locked, however, they broke open the lock and trespassed into the house of the victim and assaulted the witness Kadhar and Fathima Kani who were inside the house and abused obscene words. By knowing the details, the appellant came to the house immediately.

(i) At that time, all the accused assaulted the victim, abused her with obscene words and she sustained contusion injuries. They have also damaged the computer and other things worth about Rs.7,000/-. Further the first accused abused the appellant by stating “நீ செத்தாத்தாண்டி நான் நிம்மதியா இரண்டாவது மனைவியோட வாழ முடியும்” and also caused criminal intimidation by showing knife. The 7th accused assaulted the witness Kalithu Ibnu. The second and third accused outraged the modesty of appellant by pulling her jacket and torn it. The accused 1 to 7 formed unlawful assembly and committed the above said offences. Thereafter, P.W.1 had given complaint/Ex.P1 before the police and P.W.11/Sub-Inspector of Police has



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registered FIR/Ex.P11 in Crime No.975 of 2012 for the offences under sections 147, 294(b), 323, 452, 506(ii) of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

11. The trial Court has framed the charges as against the first accused under sections 147, 452, 294(b), 323, 506(i), 506(ii), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act. As against accused 2 to 6 charges under section 147, 452, 294(b), 323, 506(i), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act were framed. As against the seventh accused charges under sections 147, 452, 294(b), 323(2 counts), 506(i), 342 of IPC r/w. 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act, and section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, Act were framed.

12. In order to prove the above said charges, the prosecution has examined witnesses P.W.1 to 13 and marked Ex.P1 to P27 and marked M.O.1 to 3. On the side of the defence D.W.1 to 3 were examined but no document was marked. In this case P.W.1 is the defacto complainant and eye witness in



this case. P.W.1 in her evidence stated that all the accused formed unlawful assembly and trespassed into the house and assaulted one Kathar Fathima Kani, abused with obscene words, caused criminal intimidation and also damaged a computer worth about Rs.7,000/-. Further 2nd and 3rd accused grabbed her saree and torn the jacket. The 7th accused assaulted the witness Kalithu Ibnu and caused injuries to him.

(i) P.W.1 also stated that she gave a complaint/Ex.P1 and on perusal of Ex.P1, it reveals that on 10.12.2012, at about 10.30 a.m., she locked one Kathar and Fathima Kani inside the house and then went to the college. By knowing the absence of victim, all the accused trespassed into the house by breaking open the lock and assaulted Kathar and Fathima Kani and also locked him into another room and then damaged the house hold articles. Thereafter, the neighbours informed her about the occurrence and then, she came to the place of occurrence at about 11. a.m. The same complainant, during her cross examination stated that all the accused broke open the lock and entered into the house and assaulted Kathar Fathima Kani with iron rod and then locked them into the another room. Therefore, there is a major contradiction between the evidence of P.W.1 and the complaint with regard to the number of persons present inside the house. According to the complaint, one Kadhar and Fathima Kani, two persons were inside the house. But Kadhar Fathima Kani is a single



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name and she was examined as P.W.2. As per the evidence of Kathar Fathima Kani, she was present in the house. Therefore, reasonable doubt would arise about the evidence of P.W.1 and she is not a lay woman and she is a college professor. While so, she in the complaint and evidence stated as if Kadhar and Fathima Kani are two different names. Therefore, the evidence of P.W.1 is highly doubtful. Further, according to the evidence of P.W.1, the Kathar and Fathima Kani sustained blood injuries and thereafter, she was locked inside the house by the accused and they damaged the computer. But the above said iron rod has not been seized by the prosecution. Further the said Kathar Fathima Kani has not been subjected to medical examination. There was no medical treatment given to the said Kathar Fathima Kani, when she sustained blood injury on her head.

(ii) The said Kathar Fathima Kani was examined as P.W.2 and she stated before the Court that on 10.12.2012 at about 10.30 a.m, she heard the noise of the door being broken and she questioned about the same. She was told that he is the husband of Fathima namely Rahamathulla. For that, she told that Fathima was not there. Thereafter, they entered into the house and damaged the computer and other things and closed her mouth with cloth and locked her into another room. Further, she has not particularly stated about the accused who locked her in the room. Therefore, evidence of P.W.2 also creates serious



doubts over the prosecution case. Further, as per the evidence of P.W.2 her mouth was closed with cloth but there is no reference about which accused closed her mouth with cloth. More over there is no reference in the complaint about the closing of mouth of P.W.2. Therefore, reasonable doubt would arise about the case of the prosecution as to whether the occurrence had happened as alleged by the prosecution.

(iii) P.W.3 in his evidence stated that the victim was residing in the place of occurrence and one Kathar Fathima Kani also stayed with her. On 10.12.2012, at about 10.30 a.m., when he was in his work place, the victim/ Fathima made a phone call to him and she told that her husband along with others have broke open the door and damaged the household articles. Thereafter, he went to the place of occurrence immediately. At that time, all the accused were present inside the house and assaulted Fathima. When the same was questioned by him, all the accused assaulted him and abused obscene words. Further, the accused Jinna told to Rahamadulla to cut Fathima with aruval. At that time, he plucked the aruval. But P.W.1 has not stated anything about the alleged attempts made by the accused to cut her by holding the aruval. Further P.W.3 has not spoken about the specific overt-act of the accused and as per the evidence of P.W.1, P.W.3 sustained injury but P.W.1 has not witnessed anything about which part of the body, he sustained injury and there is no evidence about the injury sustained by P.W.2 and 3.



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(iv) As per the evidence of P.W.6, he also accompanied with P.W.3, but none of the witnesses have stated about the presence of P.W.6. P.W.4 and 5 are the attesting witnesses of the mahazar prepared during the investigation and their evidences are not specific and they stated before the Court that the police obtained signature by stating that for the family dispute, they came and enquired. As per the prosecution case, the things were damaged but no reference in the observation mahazar and sketch with regard to the alleged damaged things. Therefore, the evidence of prosecution witnesses are highly doubtful. The specific case of the prosecution is that the accused broke open the door and entered into the house. while so, it is the duty of the prosecution to prove that the accused have broke open the lock but there is no reference, either in the complaint or in the evidence as about the breaking of the lock over the door. Further P.W.4 mahazar witness in his evidence stated that he did not see anything in the house and he put his signature in the white paper. P.W.5 also did not state about the presence of other witnesses and thereby, the prosecution evidences are not cogent and not reliable and acceptable. Moreover, the evidence of prosecution witnesses are filled with doubts.

13.As far as the investigation is concerned, P.W.12 and P.W.13 have deposed about the investigation. The accused No.1 was also arrested and based



on the disclosure statement of the accused, the aruval was recovered, but the prosecution witnesses have not stated about the aruval, where it was placed after the occurrence. The mahazar witnesses are not sufficient to prove the alleged recovery of aruval and the recovery of aruval itself has not been proved by the prosecution and thereby the prose failed to prove its case in accordance with law.

14. As far as offence under section 147 of IPC is concerned, there is no common object and the prosecution has failed to prove the common object and the unlawful assembly with precise evidence. As far as offence under section 452 of IPC is concerned, there is no evidence that the accused, after preparation, entered into the house and committed house trespass. As far as offence under section 294(b) of IPC is concerned, there is no evidence that the accused abused obscene words towards the victim in or near the public place and somebody got annoyed. As far as offence under section 323 of IPC is concerned, there is no medical evidence and the victim also not specifically stated about the injuries sustained by them and thereby, the prosecution failed to prove the offence under section 323 of IPC.

(i) As far as offence under section 506(i) of IPC is concerned, there is no sufficient evidence to show that the accused caused criminal intimidation and



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the same also created fear in the minds of the victim. As far as offence under section 342 of IPC is concerned, it is alleged that already the said Kathar Fathima Kani was locked inside the house, while so, there is no evidence in which room, she was confined by the accused. As far as the offence under section 3(1) of Tamil Nadu (Prevention of Destruction and Loss) Act is concerned, as per the prosecution case, the accused damaged the computer and other things worth about Rs.7,000/- but the prosecution has only seized the computer that too as per the evidence of P.W.1, already the accused entered into the house and damaged the household articles and the computer. But P.W. 2 was locked inside the room, while so, there is no evidence as to who damaged the computer. As far as the offence under section 4 of Tamil Nadu Prohibition of Harassment of Woman Act is concerned, there is no evidence to prove the ingredients for the offence and the occurrence took place at residence. Therefore, the prosecution has failed to prove the charges levelled against the accused beyond reasonable doubt and the trial Court after elaborate discussion and analysis, correctly acquitted the accused.

15. Therefore, the judgement of trial Court is well reasoned one and no perverse or infirmity found on the judgement of the trial Court. Hence, this Court has no warrant to interfere with the judgment of the trial Court. Therefore, as discussed supra, this Court is of the opinion that this appeal has



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no merits and deserves to be dismissed.

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16. Accordingly, the criminal appeal is dismissed and the judgement passed by the trial Court in S.C.No.344 of 2013 dated 09.02.2016 is hereby confirmed.

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P.DHANABAL, J.

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To

The District and Sessions Court, (Mahila) Madurai

**Pre-Delivery Judgment in
Criminal Appeal (MD). No.107 of 2016**

23.11.2023