



Crl.R.C(MD)No.664 of 2018

BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED : 06.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.664 of 2018

Ramaraja

... Petitioner/Appellant/
Accused

Vs.

The Inspector of Police,
Pappakudi Police Station,
Tirunelveli.

In Crime No.24 of 2012.

... Respondent/Respondent/
Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and the judgment of conviction and sentence passed in Crl.A.No.90 of 2017 dated 16.11.2018 by the Additional District & Sessions Judge, Tenkasi, by modifying the judgment of conviction and sentence passed in C.C.No. 135 of 2017 dated 23.11.2017 on the file of the learned Judicial Magistrate, Alangulam.

For Petitioner

: Mr.K.Sivabalan

For Respondent

: Mr.M.Vaikkam Karunanithi

Government Advocate (Criminal Side)

ORDER

The Revision has been filed to set aside the the judgment passed by the learned Additional District & Sessions Judge, Tenkasi, in Crl.A.No.90 of 2017, dated 16.11.2018, by modifying the order of



Crl.R.C(MD)No.664 of 2018

conviction and sentence passed by the learned Judicial Magistrate, Alangulam, in C.C.No.135 of 2017 dated 23.11.2017.

2.The case of the prosecution is that on 29.01.2012, at about 01.00 a.m, the victim and her husband were sleeping in their house, the accused trespassed into the house through back door and pulled the victim's hand in order to misbehave with her. Hence, the complaint.

3.On the complaint, the respondent registered an F.I.R in Crime No.24 of 2012 for the offence under Section 354 of IPC r/w 4 of TNPWH Act. After completion of the investigation, they filed a final report before the learned Judicial Magistrate, Alangulam, and the same has been taken cognizance in C.C.No.135 of 2017 for the offences under Sections 354, 448 of I.P.C and Section 4 of TNPWH Act.

4.On the side of the prosecution, they had examined P.W.1 to P.W.7 and marked Exs.P.1 to P.4 and on the side of the accused, no one was examined and no document was marked.

5.On perusal of the oral and documentary evidence, the trial Court found the petitioner guilty for the offences under Sections 354 and 448 of I.P.C. For the offence under Section 354 of IPC, he was sentenced



Crl.R.C(MD)No.664 of 2018

to undergo 2 years Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo 3 months Simple Imprisonment. For the offence under Section 448 of IPC, he was sentenced to undergo 3 months Simple Imprisonment.

6. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.90 of 2017 before the Additional District & Sessions Judge, Tenkasi. The Appellate Court also confirmed the order of conviction and modified the sentence by reducing the same from 2 years Simple Imprisonment to 1 year Simple Imprisonment for the offence under Section 354 of IPC. Hence, the petition.

7. The learned counsel for the petitioner submitted that there are contradiction between the evidence of P.W.1 and P.W.2. The victim was examined as P.W.1 and her husband was examined as P.W.2. Even according to P.W.1, she categorically admitted that there was no electricity in her house. The occurrence was taken place at about 01.00 a.m on 30.01.2012. Only after the petitioner pulling her hand, she switched on the battery light and identified the petitioner herein. On the Torch Light, P.W.2, her husband also identified the petitioner. Whereas, in the cross-examination of P.W.2, he categorically deposed that only on the information given by P.W.1, he came and identified the petitioner.



Crl.R.C(MD)No.664 of 2018

Further, there was 10 hours of delay in lodging the complaint. The occurrence took place at 01.00 a.m on 30.01.2012. Whereas, the complaint was lodged only at 11.00 a.m. Absolutely, there was no explanation on the side of the prosecution for the delay of 10 hours in lodgment of FIR. Except P.W.1 and P.W.2, no other witnesses had supported the case of the prosecution. P.W.2 examined as eye-witness and he turned hostile and failed to support the case of the prosecution. He further submitted that there was previous enmity between P.W.1 & P.W.2 and the petitioner herein with regard to land. The prosecution also failed to prove the intention in order to attract the offence under Section 354 of IPC. Both P.W.1 and P.W.2 mechanically had spoken that the petitioner trespassed into their house through the back door only and ran away through the front door. Whereas, P.W.2 in his cross-examination stated that he had ran away through the back door of the house. Therefore, the prosecution failed to prove the case beyond any doubt and prayed for acquittal from all the charges.

8.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent submitted that P.W.1 and P.W.2's evidence is the best evidence and P.W.1 categorically deposed that the petitioner trespassed into the house and pulled her hand in order to



Crl.R.C(MD)No.664 of 2018

misbehave with her. The evidence of P.W.1 also corroborated the evidence of P.W.2. The delay of 10 hours in lodgment of FIR is not a matter for the case like misbehave with women. Hence, both the Courts below rightly convicted the petitioner for the offences under Sections 354 and 448 of I.P.C. Hence, it does not require any interference and prayed for dismissal of this petition.

9.Heard the learned counsel appearing on either side and perused the materials available on record.

10.It is seen that P.W.1 and P.W.2 are the wife and husband. While they were sleeping in their house on 29.01.2012, at about 01.00 a.m, the petitioner trespassed into their house through the back door entry. He pulled P.W.1's hands in order to misbehave with her. At that juncture, both were woke up and on the Torch Light, P.W.1 identified the petitioner as her neighbour. Thereafter, he ran away from the house through the back door of the house. Whereas, in cross-examination, P.W.2 deposed that after the occurrence, the petitioner ran away from the house through the front door. Further, a small contradiction between P.W.1 and P.W.2 would not affect the case of the prosecution. Since the petitioner is a neighbour to P.W.1 and P.W.2, they can easily identified the petitioner. Further, the learned Government Advocate (Crl.Side) has



Crl.R.C(MD)No.664 of 2018

rightly pointed out that the victim's evidence is the best evidence and it is also corroborated and supported by cogent evidence of P.W.2. Therefore, this Court finds no infirmity or illegality in the order passed by the Courts below.

11.However, considering the age of the petitioner and the gravity of the offence committed by the petitioner and also considering the incarceration period of 56 days, this Court is inclined to reduce the sentence alone for the offences under Sections 354 and 448 of IPC.

12.In view of the above, though the conviction passed by the trial Court for the offences under Sections 354 and 448 of IPC is hereby confirmed, sentence of 1 year Simple Imprisonment for the offence under Section 354 of IPC and sentence of 3 months Simple Imprisonment for the offence under Section 448 of IPC are reduced to the period, which was already undergone by the petitioner.

13.Accordingly, this Criminal Revision Case is partly allowed

06.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
dss



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Crl.R.C(MD)No.664 of 2018

To

- 1.The Additional District & Sessions Judge,
Tenkasi.
- 2.The learned Judicial Magistrate,
Alangulam.
- 3.The Inspector of Police,
Pappakudi Police Station,
Tirunelveli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.R.C(MD)No.664 of 2018

G.K.ILANTHIRAIYAN, J.

dss

Order made in
Crl.R.C(MD)No.664 of 2018

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