

Bail Slip

That the appellant herein/accused viz. Anbarasan was directed to be released on bail as per the order of this court dated 17.06.2008 and made in CrI.M.P.No.1 of 2008 in crl. Appl. No.118/2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.118 of 2008

Anbarasan

... Appellant/Accused

vs.

State by Inspector of Police,
All Women Police Station,
Rasipuram(Crime No.4/2006)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 30.01.2008 passed by the Principal Sessions Judge, Namakkal, in S.C.No.60 of 2007.

For appellant : Mr.A.Natarajan, Sr.counsel
for Mr.S.Kalyanaraman

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The conviction and sentence dated 30.1.2008, passed in Sessions Case No.60 of 2007, by the Principal District and Sessions Court, Namakkal, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the prosecutrix, by name, Pavithra, is a minor daughter of the defacto complainant, by name, Boopathi. On 24.09.2006, at about 11.30 a.m., while the prosecutrix has played in front of her house, the accused has taken her to the courtyard of his house, denuded her and tried to have sexual intercourse with her.

After occurrence, the father of the Prosecutrix, on 29.9.2006, has given a complaint and the same has been registered in Crime No.4 of 2006.

3. On receipt of the said complaint, P.W.9, the Inspector of Police, has taken up investigation, examined connected witnesses and also made arrangements for conducting medical examination both to the prosecutrix and accused. After his transfer, his successor in office viz., P.W.10 has laid a final report on the file of the Judicial Magistrate, Rasipuram, and the same has been taken on file in P.R.C.No.5 of 2007.

4. The Judicial Magistrate, Rasipuram, after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial Court and the same has been taken on file in Sessions Case No.60 of 2007.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed a charge against the accused under Sections 376(2)(f) r/w.511 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge framed against him and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exs.P1 to P14 have been marked.

7. When the accused has been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, the accused himself has been examined as D.W.1

8. The trial Court, after hearing arguments of both sides and upon perusing the available evidence on record, has found the accused guilty under Sections 376(2)(f) r/w 511 of the Indian Penal Code and sentenced him to undergo five years rigorous imprisonment and also imposed a fine of Rs.10,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been filed, at the instance of the accused, as appellant.

9. The sum and substance of the case of the prosecution is that both the defacto complainant and accused are neighbours. On 24.09.2006, at about 11.30 a.m., the accused has taken the prosecutrix to the courtyard of his house, denuded her and attempted to commit rape.

10. The defacto complainant has been examined as P.W.1, the prosecutrix has been examined as P.W.2 and the Doctor, who medically examined the prosecutrix, has adduced evidence as P.W.6 and she marked Ex.P11.

11. The trial Court, after considering the sole testimony of the prosecutrix, coupled with other connected evidence, has found the accused guilty under Sections 376(2)(f) r/w.511 of the Indian Penal Code and imposed a sentence as mentioned in the judgment.

12. The learned counsel appearing for the appellant/accused has raised the following points to set aside the conviction and sentence passed by the trial Court:

(a) The occurrence has taken place on 24.09.2006 at about 11.30 a.m., whereas, Ex.P1, complaint, has been given on 24.09.2006. No satisfactory explanation has been given on the side of the prosecution for giving Ex.P1 belatedly.

(b) The Doctor, who examined the prosecutrix, has adduced evidence as P.W.6 and she has not found any injury on the person of the prosecutrix.

(c) The defacto complainant has given some contradictions in his evidence and the trial Court has failed to consider the same.

(d) Even assuming, without conceding, that such occurrence has taken place, the offence alleged to have been committed by the appellant/accused would not come within the contour of Sections 376(2)(f) r/w 511 of the Indian Penal Code and at the most, the accused can be mulcted with liability under Section 354 of the Indian Penal Code.

13. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix has been examined as P.W.2 and in fact, she has given concrete/trustworthy evidence to the effect that in the place of occurrence, after removing her dress, the accused has made an attempt to rape her and since the prosecutrix has given such kind of evidence, the trial Court has rightly invited conviction and sentence against the appellant/accused and therefore, the conviction and sentence passed by the trial Court are not liable to be set aside.

14. For the sake of convenience, the first three points raised on the side of the appellant/accused can be clubbed together.

15. It is seen from the records that the occurrence has taken place on 24.09.2006, whereas, Ex.P1 has been given on 29.09.2006. It is true that five days delay has occurred in giving Ex.P1. Since five days delay has occurred in giving Ex.P1, the Court cannot come to a conclusion, on the basis of delay, that the case of the prosecution is false.

16. The specific case of the prosecution is that after removing dress of the prosecutrix, the accused has made an attempt to rape her. Since it is not the case of the prosecution that the accused has actually raped the prosecutrix, the question of sustaining injury on the person of the prosecutrix does not arise.

17. Further, it is seen from the evidence given by P.W.1 that some contradictions are available and the same are nothing but nugae. Therefore, in the light of the discussion made earlier, this Court is of the view that the first three contentions put forth on the side of the appellant/accused cannot be accepted.

18. Now, the Court has to look into the legal point raised on the side of the appellant/accused. In fact, this Court has closely perused the evidence given by the prosecutrix. The specific evidence given by the prosecutrix is that in the place of occurrence, the accused has denuded her and subsequently, made arrangements to rape her. It is not an exaggeration to say that the prosecutrix has given uncontroverted evidence to that effect. Under the said circumstances, her evidence cannot be eschewed on any ground. On the basis of her evidence, the Court can very well come to a conclusion that an attempt has been made by the appellant/accused to commit rape, after denuding the prosecutrix.

19. The learned counsel appearing for the appellant/accused has drawn the attention of this Court to the decision reported in (2007) 1 MLJ (Cr1) 452 (Tarkeshwar Sahu vs. State of Bihar (Now Jharkhand), wherein, the Hon'ble Supreme Court has dealt with the case of similar factual situation and ultimately found that at the most, the accused can be convicted under Section 354 of the Indian Penal Code.

20. In the instant case, as stated in many places, only an attempt has been made by the appellant/accused to commit rape, after removing the dress of the prosecutrix. Considering the extent of act done by the appellant/accused, the Court can very well come to a conclusion that the accused can be mulcted with liability only under Section 354 of the Indian Penal Code instead of Section 376(2)(f) r/w.511 of the Indian Penal Code

and to that extent, this criminal appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part. The conviction and sentence passed by the trial Court are modified as follows:

The appellant/accused is found guilty under Section 354 of the Indian Penal Code and sentenced to undergo one year rigorous imprisonment instead of under Section 376(2)(f) r/w.511 of the Indian Penal Code and no modification is made with regard to fine amount imposed by the trial Court. The period already undergone by the appellant/accused is ordered to be deducted.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

msk

1. The Inspector of Police,
All Women Police Station,
Rasipuram

2.The Principal Sessions Judge, Namakkal

3.The Judicial Magistrate, Rasipuram,
Namakkal District.

4.-do-Thro The Chief Judicial Magistrate, Namakkal (For
Information)

5.The Superintendent, Central Prison, Coimbatore.

6.The Public Prosecutor,
High Court, Madras

+1 cc to M/s. S.Kalyana Raman, Advocate, sr.67003

Cr1.A.No.118 of 2008

ug co
kra 18.12.2015