

BAIL SLIP

The Appellant/Accused Viz Perumal, S/o. Annamalai, in Crl.A.704/09 was directed to be released on bail as per order of this court dated 04/12/09 made in MP 1/09 in Crl.A.704/09.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Criminal Appeal No.704 of 2009

Judgment reserved on: 09.03.2015

Judgment pronounced on: 16.03.2015

Perumal

... Appellant/Accused

vs.

State Rep. By
The Inspector of Police
Chitlapakkam Police station
Kancheepuram District.
Cr.No.632 of 2007.

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., against the judgment of conviction and sentence dated 04.11.2009, made in S.C.No.281 of 2007 on the file of the learned Sessions and Mahila Judge, Chengalput.

For Appellant : Mr.S.V.Ramamurthy

For Respondent : Mr.V.Arul

Government Advocate (crl.side)

J U D G M E N T

This Criminal Appeal arises out of the judgment of conviction and sentence dated 04.11.2009, made in S.C.No.281 of 2007 on the file of the learned Sessions and Mahila Judge, Chengalput, whereby the accused/the appellant herein was convicted and sentenced as follows:

offence under Section	Sentence
450 IPC	To undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default in payment to undergo six months simple imprisonment.
376 IPC	To undergo seven years rigorous imprisonment and to pay a fine of Rs.3,000/- in default in payment to undergo one year simple imprisonment.
The sentence are ordered to be run concurrently.	

2.The case of the prosecution based on the prosecution witnesses is as follows:

(i)On the side of the prosecution, P.W.1 to P.W.12 were examined, Exs.P1 to P18 and M.O.1 to M.O.5 were marked.

(ii)P.W.2 and P.W.3 are the father and mother of P.W.1/victim girl and they were residing at Hasthinapuram. The appellant/accused is the friend of the father of P.W.1, namely, P.W.2. P.W.2/father of P.W.1 is doing old scrap business and on Sundays, he used to sell meat. P.W.3/mother of P.W.1 is doing business in Jaggery and Fried gram. The elder sister of P.W.1, Lakshmi, is working in MEPZ. P.W.1 had sustained head injury and so, she is taking medicine for mental illness. On 02.03.2007, at about 3.00 p.m., when she was alone in the house, she heard the noise of someone knocking the door. She asked as to who is knocking the door and thereafter, she opened the door. The appellant/accused entered the house and asked her to give some water. P.W.1 gave water and the appellant/accused increased the volume of the Radio and then locked the door inside. Then, the appellant/accused committed rape. Thereafter, the appellant/accused told her not to tell the alleged occurrence to her father/P.W.2 and then he went. When P.W.2, father of P.W.1 returned home after finishing his work, he saw P.W.1 was crying and then, P.W.2 asked her about what has happened and then, P.W.1 informed her father about the alleged occurrence. Thereafter, P.W.2 informed the same to his wife/P.W.3. Then, on the same day at about 11.00 p.m, they went to Chitlappak Police Station and lodged a complaint/Ex.P.1.

(iii)P.W.10/Dinakaran, Inspector of Police, Chitlapakkam Police Station received the complaint/Ex.P.1 and registered a case in Crime No.632 of 2007 under Section 376 IPC and prepared the printed FIR/Ex.P.7. Then, P.W.10 went to the place of occurrence and prepared the observation mahazar/Ex.P.8 and drew rough sketch/Ex.P.9 in the presence of witnesses, P.W.7/Harikrishnan and P.W.8/Panneerselvam. Then, he recorded the statements of P.W.1 to P.W.3 and one Rajan. Thereafter, he seized M.O.1 and M.O.2 from

P.W.1 under seizure mahazar/Ex.P.10. On 03.03.2007, at about 8.00 a.m., P.W.10 arrested the appellant/accused in the presence of witnesses, namely, P.W.9/Murugan and one Mohabul and recorded the confession statement of accused. Then, he seized M.O.3 to M.O.5 from the accused under seizure mahazar/Ex.P.6 in the presence of above said witnesses. P.W.10 produced the accused for remand. Thereafter, P.W.10 submitted a requisition letter/Ex.P.11 to the learned Judicial Magistrate to send P.W.1 for medical examination and further, submitted a requisition letter/Ex.P.12 to send the accused for medical examination and also submitted a requisition letter/Ex.P.13 to send the seized materials for chemical analysis. Thereafter, P.W.10/Dinakaran got transferred.

(iv) On 07.03.2005, P.W.12/Dr.Srinivasaraghavan, on receipt of requisition/Ex.P.17 from the learned Judicial Magistrate, Tambaram, examined the accused and issued Ex.P.16 certificate stating that the age of the accused would around 40. He has also issued a report/Ex.P.15 stating that the accused is not an impotent. He would further submit that on receipt of requisition/Ex.P.18 from the learned Judicial Magistrate, Tambaram, Dr.Parimala, who also working in the same Department, examined the victim girl/P.W.1 and issued Ex.P.14 certificate stating that the age of the victim girl would be around 20.

(v) On 09.03.2007, P.W.5/Dr.Seethalakshmi, examined the victim girl/P.W.1 who was accompanied by her parents and Tmt.Allirani, Head Constable and found that the hymen got ruptured and easily admits one finger. She further submitted that no evidence of spermatazoa seen, either motile or non-motile. She issued the Accident Register Copy/Ex.P.4. and a report/Ex.P.5.

(vi) On 16.03.2007, P.W.4/Dr.Kamalakshi Krishnamurthy, on receipt of requisition/Ex.P.2 from the learned Judicial Magistrate, Tambaram through Mr.Anandraj, Head Constable, examined the seized materials, M.O.1 to M.O.5 and issued a report/Ex.P.3 stating that detected blood on M.O.2 and not in any other material objects and did not detect any semen or hair on any of the material objects.

(vii) P.W.11/Navaneethakrishnan, Inspector of Police, Chitlapakkam Police Station examined all the witnesses and recorded their statements. After completing the investigation, filed the charge sheet against the accused/appellant herein under Sections 376 IPC.

3.The Trial Court placed the incriminating evidence before the accused under Section 313 of Cr.P.C. and the accused denied the same in toto. On the side of the defence, no oral evidence was examined and no documentary evidence was marked. After considering the oral and documentary evidence, the trial Court convicted the accused/appellant herein for the offence under Sections 450 and 376 IPC and sentenced him as stated above. Aggrieved over the same, the

first accused/appellant has preferred this appeal.

4. Challenging the conviction and sentence passed by the Trial Court under Sections 450 and 376 IPC, the learned counsel appearing for the appellant raised the following points:

- (i) The time of the occurrence has not been properly explained.
- (ii) The ocular evidence is contra to medical evidence.
- (iii) P.W.7, who is the attester of the Seizure Mahazar, has turned hostile and it is fatal to the case of the prosecution.
- (iv) The Duration of the offence was mentioned as one hour. Duration of the commission of offence is necessary for deciding the case and that factum was not considered by the Trial Court.
- (v) He relied upon the judgment reported in 2007 CrI. L.J 2467 (Joseph vs. State of Kerala)
- (vi) Hence, he prayed for setting aside the conviction and sentence passed by the Trial Court.

5. Resisting the same, the learned Government Advocate (CrI. Side) would submit that P.W.1 is the victim girl, P.W.2 and P.W.3 are the father and mother of P.W.1 and the appellant/accused is none other than the friend of P.W.2. He would further submit that there is no reason for discarding the evidence of P.W.1 and the evidence of P.W.1 is reliable and that has been rightly considered by the Trial Court. Hence, he prayed for dismissal of the appeal.

6. Considered the rival submissions made on both sides and perused the typed set of papers.

7. P.W.2 and P.W.3 are the parents of P.W.1. They are having four daughters and out of them, two daughters got married and another daughter is working in MEPZ and P.W.1 is the fourth daughter. P.W.2, father of P.W.1, is doing old scrap business and on Sundays, he is doing mutton business and her mother, P.W.3 is doing business in Jaggery and Fried gram. P.W.1 sustained head injury and hence, she is having some mental illness. For which, she is taking medicine. On the fateful day, i.e. on 02.03.2007, when she was at home after taking medicine, she heard the noise of somebody knocking the door. She opened the door and at that time, the appellant/accused, who is the friend of her father/P.W.2 asked water and when she went inside to bring water, the appellant/accused entered the house and increased the volume of the Radio and then, he locked the door inside and committed rape. When, P.W.2 returned home after finishing his work, P.W.1 intimated about the rape committed by the appellant/accused. P.W.2 also informed about the same to his wife/P.W.3. Thereafter, they went to the Police Station and gave a complaint on the same day at about 11.00 p.m. A case has been registered by P.W.10 in

Cr.No.632 of 2007 under Section 376 IPC and then P.W.1 was sent to the hospital for medical examination.

8.P.W.5 treated P.W.1 on 09.03.2007 and issued a report/Ex.P.4. P.W.5 has also stated that she has not cooperated for examination. It is pertinent to note that P.W.2 and P.W.3 has stated that P.W.1 has sustained head injury and she is taking treatment for mental illness. The appellant/accused is not a new person and he is the friend of her father/P.W.2. So, the appellant has acquaintance with the family naturally. When he knocked the door, she opened the door and on seeing the appellant, she permitted him and gave water and that has been taken advantage by the appellant/accused. It is well settled dictum of the Hon'ble Apex Court that the evidence of victim of the sexual assault is sufficient base for conviction and it need not require any corroboration provided the evidence of the victim girl inspire confidence. On perusal of the evidence of P.W.1 along with P.W.6/Datchayini, who is a landlady, wherein she has deposed that on 02.03.2007 the appellant/accused has gone to the house of P.W.1 and she witnessed the same. So, I am of the view that the evidence of P.W.1 is wholly reliable and it does not require any corroboration. On perusal of evidence of P.W.1 and P.W.6, I am of the view that the appellant herein has entered the house and committed rape upon her. Merely because the Doctor, P.W.5 has stated that P.W.1 has not co-operating for medical examination, it will not be a reason for discarding the evidence. But admittedly, the clothes of P.W.1 and the accused has been sent for chemical analysis as per requisition/Ex.P.2 and Ex.P.3 is the report, wherein it was stated that the inskirt of P.W.1, which was marked as M.O.2 contains dark brown blood stains and not in any of the items and semen or hair was also not deducted in the above items, which shows that she was subjected to rape. Merely because P.W.7 and P.W.8, who are the attestors of Seizure Mahazar, turned hostile, it will not affect the case of the prosecution.

9.The learned counsel appearing for the appellant would also relied upon the portion of evidence of P.W.10/Investigating Officer and submits that the scene of occurrence has not been properly explained. As already stated, the evidence of P.W.1 has been corroborated by P.W.6. P.W.6, both in her chief and cross examination, has categorically stated that on 02.03.2007 at about 3.00 p.m., she witnessed the accused going to the house of P.W.2 and complaint has been given on the same day. The same was despatched to the Court on 03.03.2007 (Saturday) and reached the court on 05.03.2007 (Monday), since 04.03.2007 happens to be Sunday. So, there is no delay.

10.The learned counsel appearing for the appellant would also submit that P.W.1, in her evidence, has stated that the occurrence said to have taken place for one hour and she has not made any attempt to escape from the hands of the appellant. But the above argument does not hold good. Because P.W.1 in her chief has stated that she is having some health problem and she is taking medicine for her mental illness and at that time, she heard the noise of somebody knocking door and then she opened the door. In such circumstances, we cannot expect that she should have used self defence. Furthermore, P.W.1 in her evidence, has stated that the accused entered the house and asked water and when she went inside to bring water, the appellant increased the volume of the Radio. In such circumstances, the cry made by P.W.1 cannot be heard by others. But, whereas as already stated P.W.6 has corroborated that on that day, the appellant herein has gone to the house of P.W.1. In such circumstances, the duration of commission of offence is immaterial.

11.The learned counsel appearing for the appellant also relied upon the decision reported in 2000 CrI. L.J 2467. But the above citation is of murder and robbery case. In that, during the Post mortem it was came to the conclusion that the deceased was subjected to sexual intercourse before her death. In the report, it has been stated that cloth of the appellant, subjected to chemical examination, contained no stains of blood or semen. It is further stated that if there had been any forcible sexual intercourse, the victim must have made some strong resistance being a grown up lad and in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. But here in this case, as already discussed above, the victim girl/P.W.1 has taken medicine for her mental illness. Furthermore, the victim girl was examined as P.W.1 and deposed about the rape committed against her. In such circumstances, I am of the view that the above citation is not applicable to the present case.

12.As discussed above, the evidence of P.W.1 is wholly reliable and it need not require corroboration. Further, the clothes of P.W.1 contains blood stains as per Ex.P.3. The evidence of P.W.1 has also been corroborated by P.W.6. The Trial Court has considered all the aspects in proper perspective and came to the correct conclusion that the appellant has trespassed into the house of P.W.1 and committed rape. Hence, the conviction and sentence passed by the Trial Court against the accused under Sections 450 and 376 IPC is hereby confirmed.

13. With regard to the quantum of sentence is concerned, since the appellant has the relationship as friend of the father of P.W.1/victim girl, I do not find any reason to show any leniency to the appellant. Hence, the sentence imposed by the Trial Court does not warrant any interference and it is hereby confirmed.

14. In fine,

(i) The Criminal Appeal is dismissed.

(ii) Judgment of conviction and sentence passed by the learned Sessions and Mahila Judge, Chengalput in S.C.No.281 of 2007 dated 04.11.2009 is hereby confirmed.

(iii) Bail bond, if any executed by the appellant/accused shall stand cancelled.

(iv) The trial Court is directed to secure the custody of the appellant/accused to undergo the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cse

To

1. The learned Sessions and Mahila Judge, Chengalput.
2. The Judicial Magistrate, Tambaram.
3. -do- Through The Chief Judicial Magistrate, Chengalputtu.
4. The Superintendent, Central Prison, Puzhal, Chennai.
5. The Inspector of Police Chitlapakkam Police station Kancheepuram District.

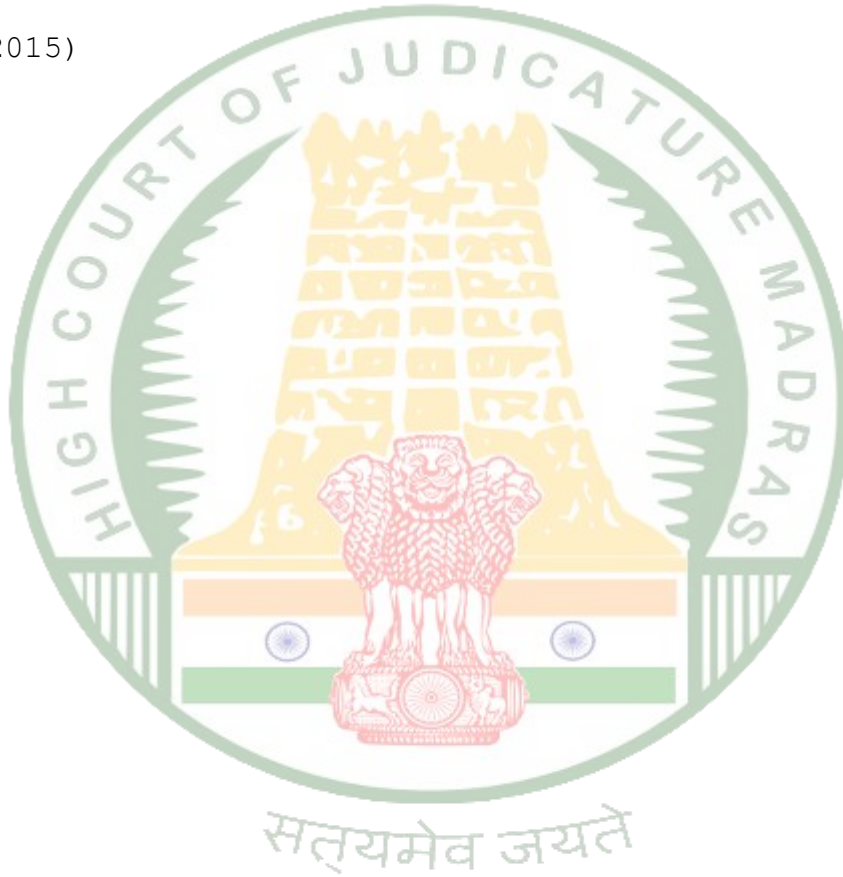
6. The Public Prosecutor
High Court, Madras.

7. The Record Keeper
Criminal Section, High Court, Madras.

+1cc to Mr.S.V.Ramamurthy, Advocate, S.R.No.14561

Criminal Appeal No.704 of 2009

VD(CO)
CA(19/03/2015)



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