

Bali Slip

Appellant in CrI.A.NO.537/2008 (Sole Accused in S.C.No.99 of 2007 dated 4.2.2008 by the District Sessions Judge, Thiruvannamalai) was released on bail as per order of this Court dated 18.3.2010 in CrI.M.P.No.1 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 01-12-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.537 of 2008

Munusamy ... Appellant

Vs.

State rep. by its
The Deputy Superintendent of Police,
Tiruvannamalai Rural
Tiruvannamalai 606 601
(Crime No.70 of 2003,
Thanipadi Police Station) ... Respondent

Criminal Appeal under Section 374(2), Cr.P.C., against the order of conviction and sentence passed by the District Sessions Judge, Tiruvannamalai dated 04-02-2008 in S.C. No.99 of 2007.

For appellant :: Mr. V. Parthiban for E. Kannadasan

For respondent :: Mr. P. Govindarajan, Addl.P.P.

JUDGMENT

The conviction and sentence dated 04-02-2008 passed in S.C. No.99 of 2007 by the District Sessions Judge, Tiruvannamalai are being challenged in the present Criminal appeal.

2. The case of the prosecution is that on 25-01-2003 at about 7:00 p.m., in Puliampatti Village, while the prosecutrix has been in her house, the accused has suddenly entered into and attacked the prosecutrix and thereby caused simple injuries. Further the accused has deflowered her. After occurrence on 28-01-2003, the mother of the prosecutrix viz., defacto complainant herein has given the complaint in question, and the same has been registered in Crime No.70 of 2003. The complaint given by the defacto complainant has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.12 has taken up investigation, examined connected witnesses and also made arrangements to ascertain the age of the prosecutrix and further, both the prosecutrix and accused have been medically examined and after completing

investigation laid a final report on the file of the Judicial Magistrate Court, Chengam and the same has been taken on file in P.R.C.No.3 of 204.

4. The Judicial Magistrate, Chengam after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court has committed the case to the Court of Sessions, Tiruvannamalai Division and the same has been taken on file in S.C.No.99 of 2007.

5. The Trial Court after hearing arguments of both sides and after considering the relevant materials on record has framed first charge against the accused under Section 323 and second charge against him under Section 376, IPC and third charge against him under Section 3(2)(5) of SC/ST Act and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 15 have been examined and Exs-P1 to P15 and M.Os.1 to 3 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The Trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 376, IPC and sentenced him to undergo 10 years Rigorous Imprisonment and also imposed a fine of Rs. 20000/- (Rupees Twenty thousand only) with usual default clause. The Trial Court acquitted the accused in respect of remaining charges framed against him. Against the conviction and sentence passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

9. The sum and substance of the case of the prosecution is that on 25-01-2003 at about 7:00 p.m., in Puliampatti Village, while the prosecutrix has been in her house, the accused has suddenly entered into and attacked the prosecutrix and subsequently raped her.

10. On the side of the prosecution for the purpose of proving the alleged offence of rape, the mother of the prosecutrix has been examined as P.W.1 and the prosecutrix has been examined as P.W.2. The Doctor who medically examined her has been examined as P.W.4 and the Trial Court after considering the evidence given by the witnesses referred to supra and the evidence of other connected witnesses has found the accused guilty under Section 376, IPC and sentenced him to undergo imprisonment as mentioned in the judgment.

11. 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 entire case of the prosecution is based upon Ex-P1, complaint wherein no mention has been made with regard to rape alleged to have been committed by the accused.

(b) The specific evidence given by P.W.8, during the course of cross-examination is that prior to one year from the date of occurrence the defacto-complainant has given a complaint against one Elumalai by way of saying that he has committed an offence of rape and subsequently, after getting money the said case has been compromised and even P.W.1 (defacto complainant) has also admitted the same and therefore, the regular habit of P.W.1 is to give false complaint for the purpose of extracting money from others and her evidence cannot be believed in.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the prosecutrix has been examined as P.W.2 and her specific evidence is that the accused has attacked and subsequently, raped her. The evidence given by P.W.2 has been clearly corroborated by P.W.4 and her specific evidence is that she found some scars on the body of the prosecutrix and her specific opinion is that the prosecutrix has been subjected to sexual intercourse and the Trial Court after considering their evidence coupled with other evidence has rightly invited conviction and sentence against the accused under Section 376, IPC and therefore, the judgment passed by the Trial Court need not be set aside.

13. On the basis of divergent submissions made on either side, the Court has to analyse as to whether both P.Ws.1 and 2 are believable/trustworthy witnesses. As rightly pointed out on the side of the appellant/accused in Ex-P1, complaint no mention has been made with regard to rape alleged to have been committed by the appellant/accused whereas in Ex-P1 it has been simply stated that the appellant/accused has slapped on the cheeks of the prosecutrix. At this juncture, it would be very useful to look into the evidence given by P.Ws.1 and 8. The specific evidence given by P.W.8 during the course of cross-examination is that prior to one year from the date of occurrence, P.W.1 has given a complaint against one Elumalai by way of stating that he has committed an offence of rape and subsequently, the said complaint has been withdrawn by way of receipt of money by P.W.1. The said aspect has been clearly accepted by P.W.1. Therefore, it is quite clear that both P.Ws.1 and 2 are in the habit of giving successive complaints one after another for the purpose of extracting money. If really such occurrence has taken place on the date of occurrence definitely the same would have been mentioned in Ex-P1. It has already been pointed out that in Ex-P1 no mention has been made with regard to the alleged fact that in

the place of occurrence, the accused has raped the prosecutrix. Since in Ex-P1 such materials are not found place and since P.Ws.1 and 2 are in the habit of extracting money from others by way of giving false complaints one after another, it is needless to say that the prosecution has not at all established the guilt of the accused punishable under Section 376,IPC and further on the basis of evidence given by P.W.4, the Court cannot fix the liability upon the accused under Section 376, IPC.

14. The Trial Court without considering the lack of materials so as to constitute the offence punishable under Section 376, IPC in Ex-P1 and also without considering the fact that P.Ws.1 and 2 are not at all trustworthy witnesses has erroneously invited conviction and sentence against the appellant/accused under Section 376,IPC.

15. In view of the discussion made earlier, this Court has found considerable force in the contention put forth on the side of the accused/appellant and altogether, this criminal appeal is liable to be allowed.

In fine, this criminal appeal is allowed. The conviction and sentence passed by the Trial Court are set aside. The appellant/accused is acquitted. Bail bond if any executed by him shall stand cancelled. Fine amount, if any paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

glp

To

1. The Judicial Magistrate Chengam.

2-do- Thro'The Chief Judicial Magistrate Thiruvannamalai.

3. The District Sessions Judge, Thiruvannamalai.

4. The Deputy Superintendent of Police,
Tiruvannamalai Rural, Tiruvannamalai 606 601

5. The Superintendent Central Prison Vellore.

6. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.E. Kannadasan, Advocate Sr.65405

Criminal Appeal No.537 of 2008

TEJ(CO)

En 11-12-15