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Bail Slip

The Appellants/Accused namely Accused No.1 Kattarai @ Nellamegam and Accused No.2 Chandran was directed to be released on bail vide and dated 17.4.07 and 20.2.2006 respectively made in MP 4264/06 in CrI.A.No.79/06 and CrI.MP No.578/06 in CrI A.No.79/06

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.79 of 2006
and M.P.No.4264 of 2006

1.Kattari @ Neelamegam
2.Chandra

... Appellants/Accused 1 & 2

vs.

State
by Inspector of Police
Andimadam Police Station
(Crime No.379/2004)
Ariyalur District

...Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973 against the judgment passed in S.C.No.54 of 2005 dated 30.11.2015 by the Additional Sessions Court (Fast Track Court), Ariyalur.

For appellants : Mr.S.Ashokkumar, Senior Counsel
for A.Sasidaran

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

JUDGMENT

The convictions and sentences dated 30.11.2015 passed in Sessions Case No.54 of 2005 by the Additional District and Sessions Court (Fast Track Court), Ariyalur, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the prosecutrix, by name Lalitha is the daughter of the defacto complainant, by name Senthamarai; that on 09.09.2004, at about 1.00 p.m., both of them have worked in their field. At that time, the 1st accused



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has approached the prosecutrix for getting water and after some time, the first accused has asked the prosecutrix to come to house along with him. The prosecutrix has conceded the request made by the 1st accused and proceeded towards house along with him and on the way, the 1st accused has taken the prosecutrix to the thatched house of one Panneer and suddenly he has given a slobber on the face of the prosecutrix and subsequently pulled her down and made arrangements to deflower her. The prosecutrix has raised a queer noise and after hearing the same, the defacto complainant has come to the place of occurrence and after seeing her, the 1st accused has threatened both the defacto complainant and prosecutrix by showing a knife to the effect that they should not divulge the matter to anybody and after occurrence, both the prosecutrix and defacto complainant have met the mother of the 1st accused (2nd accused) and complained about him. But the 2nd accused has failed to heed their complaint and also directed them to commit suicide. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.379/2004. The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.14 has taken up investigation, examined connected witnesses and also made arrangements for taking dying declaration from the prosecutrix and accordingly the concerned Judicial Magistrate (P.W.7) has recorded the dying declaration. The Investigating Officer has also made arrangements to record the statement from the prosecutrix under Section 164 of the Criminal Procedure Code and accordingly, the Judicial Magistrate (P.W.8) has recorded a statement from her under the said section. The Investigating Officer has also made arrangements for conducting medical examination both to the prosecutrix and 1st accused and after completing investigation laid a final report on the file of Judicial Magistrate Court, Jayamkondam and the same has been taken on file in P.R.C.No.73/2004.

4. The Judicial Magistrate, Jayamkondam, after considering the fact that the offences alleged to have been committed by both the accused are triable by Sessions Court has committed the case to the court of sessions, Perambalur Division and the same has been taken on file in Sessions Case No.54/2005 and subsequently made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed 1st charge against the 1st accused under Section 376; 2nd charge under Section 506(2) of the Indian Penal Code (hereinafter called as "IPC"). The trial court has framed 3rd charge against 2nd accused under Section 305 of the IPC and 4th charge against the 2nd accused under Section 376 read with 109 of the IPC and the trial court has framed the 5th charge against the 1st accused under



Ex.P.1, the complaint.

10. On the side of the prosecution, the defacto complainant has been examined as P.W.1. The prosecutrix has been examined as P.W.2. The doctor, who has initially seen P.W.2 has been examined as P.W.10 and another doctor has been examined as P.W.13.

11. The trial court, after considering the evidence given by the witnesses referred to supra has invited convictions and sentences as mentioned in the judgment.

12. The learned counsel appearing for the appellants/accused has raised the following points so as to set aside the convictions and sentences passed against the appellants/accused:-

(i) In between families of the defacto complainant and accused, a motive has been in existence prior to occurrence with regard to landed properties and due to that the accused have been falsely roped in the present case;

(ii) After the alleged occurrence, the prosecutrix viz., P.W.2 has been examined by the doctors viz., P.W.10 and P.W.13 and both of them have not found any injury in the labia of the prosecutrix and therefore, the entire case of the prosecution is false one;

(iii) The 5th charge framed against the 1st accused is that he has also directed P.Ws.1 and 2 to commit suicide, but, absolutely no evidence is available on the side of the prosecution;

(iv) The 3rd charge framed against the 2nd accused is under Sections 376 read with 109 of the IPC. Since the occurrence has taken place earlier and the 2nd accused has had no connection whatsoever with the occurrence and therefore, the 4th charge framed against the 2nd accused is totally illegal.

13. In order to remonstrate the contentions put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has sparingly contended that in the instant case, the defacto complaint has been examined as P.W.1 and her specific evidence during the course of cross-examination is that prior to the occurrence, no motive has been in existence between the family of the accused and the defacto complainant and the prosecutrix has been examined as P.W.2 and her specific evidence is that in the place of occurrence, the 1st accused has given slobber on her face and pushed her on ground and subsequently, by lying on her body, tried to insert his private part into her private part and subsequently, she has been examined by P.Ws.10 and 13. The trial court, after considering the overall evidence available on record, has rightly found the 1st accused guilty under Sections 376, 506(2) and 305 of the IPC and further the trial court, and also rightly found the 2nd accused guilty under Section 305 of the IPC and therefore the convictions and



sentences passed by the trial court need not be interfered with.

14. On the basis of divergent submissions made on either side, the court has to look into the 4th charge framed against the 2nd accused. The 4th charge framed against the 2nd accused is under Section 376 read with 109 of the IPC. In fact, this Court has perused the entire evidence adduced by P.Ws.1 and 2 and absolutely there is no evidence with regard to instigation of 2nd accused, before committing the alleged offence of rape by the 1st accused. Therefore, the 4th charge is totally unwarranted and the trial court has erroneously framed the 4th charge against the 2nd accused and under the said circumstances, the conviction and sentence passed against the 2nd accused under Section 376 read with 109 of the IPC by the trial court are liable to be set aside.

15. The learned counsel appearing for the appellants/accused has also contended to the effect that absolutely there is no evidence against the 1st accused so as to invoke Section 305 of IPC. As rightly contended on the side of the appellants/accused, for invoking the said section against the 1st accused, even an iota of evidence is not available and therefore, the conviction and sentence passed by the trial court against the 1st accused under Section 305 of the IPC are not factually and legally sustainable and therefore, liable to be set aside.

16. Now, the court has to analyse the 1st, 2nd charge framed against the 1st accused and 3rd charge framed against the 2nd accused.

17. The prosecution has set the law in motion only on the basis of Ex.P.1-Complaint. As pointed out earlier, the defacto complainant has been examined as P.W.1 and her specific evidence is that she heard queer noise of her daughter and therefore, rushed to the place of occurrence, where, she found that the 1st accused has been lying on the body of her daughter and immediately the 1st accused has threatened her as well as her daughter by showing a knife. The prosecutrix, as stated earlier, has been examined as P.W.2 and her specific evidence is that on the basis of demand made by the 1st accused, she accompanied him and he has taken her to the thatched house belongs to one Panneer and given slobber and subsequently pushed her on ground and thereafter, he put his private part into her private part and at that time, raised a queer noise.

18. It is a settled principle of law that mere penetration would be sufficient to constitute an offence punishable under Section 376 of the IPC.



19. Therefore, from the conjoint reading of the evidence given by P.Ws.1 and 2, the court can easily come to a conclusion that the 1st and 2nd charges framed against the 1st accused have been clearly proved on the side of the prosecution.

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20. As stated earlier, the 3rd charge framed against the 2nd accused is under Section 305 of the IPC. For the purpose of proving the said charge, both P.Ws.1 and 2 have given consistent evidence to the effect that after occurrence, they approached the 2nd accused and complainer of her son, but she stated that both P.Ws.1 and 2 should commit suicide. Therefore, from the evidence given by P.Ws.1 and 2, the 3rd charge framed against the 2nd accused has also been proved by the prosecution.

21. The first and foremost contention put forth on the side of the appellants/accused is that prior to occurrence, a strong motive has been in existence in between families of P.W.1 and accused with regard to landed properties and only due to that both the accused have been falsely roped in. In fact, this court has analysed the entire evidence given by P.W.1. In cross-examination, a bald suggestion has been put to her to the effect that a motive has been in existence in between two families, but she firmly refused the mere suggestion put forth and further P.W.1 has categorically stated in her evidence that no motive has been in existence prior to occurrence in between her family and family of the accused. Therefore, the first and foremost contention put forth on the side of the appellants/accused is sans merit.

22. The second contention put forth on the side of the appellants/accused is that after occurrence, the prosecutrix viz., P.W.2, has been medically examined by P.Ws.10 and 13 and their specific evidence is that no injury is found in the labia of the prosecutrix and therefore, the theory of rape put forth by the prosecution is false.

23. For considering the second contention put forth on the side of the appellants/accused, the court has to once again look into the specific evidence adduced by prosecutrix viz., P.W.2.

24. The specific evidence given by P.W.2 is that the 1st accused has put his private part into her private part and at that time, she raised a queer noise and after hearing the same, P.W.1 has come to the place of occurrence. Considering the nature of act alleged to have been committed by the 1st accused, it is needless to say that labia of the prosecutrix would not have sustained any injury.

25. It is an admitted fact that both P.Ws.10 and 13 have given such kind of evidence. It has already been pointed out that considering the nature of act done by the 1st accused,



injury would not have happened either in labia majora or in labia minora of the prosecutrix viz., P.W.2. Therefore, the second contention put forth on the side of the appellants/accused also goes out without merit.

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26. The fourth contention put forth on the side of the appellants/accused is that the specific evidence given by P.W.10 is that before meeting him, P.W.2 has met a private doctor and the said doctor has not been examined on the side of the prosecution and therefore, the case of the prosecution cannot be believed in.

27. It is an admitted fact that P.W.10 has given a clear evidence to that effect. Simply because a private doctor, who initially examined has not been examined on the side of the prosecution, the court cannot eschew the credit-worthy evidence given by P.Ws.1 and 2. Therefore, the 4th contention put forth on the side of the appellants/accused cannot be accepted.

28. The third contention has already been discussed.

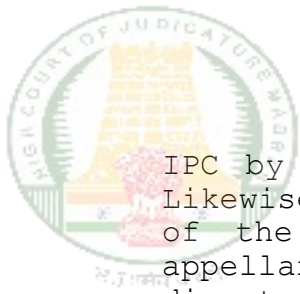
29. Before parting with this case, the court would like to sum up the following aspects:-

In fact, this court has perused the entire evidence given by P.W.2 and ultimately come to a conclusion that P.W.2 is a reliable witness. Since P.W.2 is a reliable witness, the court can unflinchingly come to a conclusion that the 1st accused has committed an offence of heinous nature punishable under Section 376 of the IPC. Further as narrated earlier, the prosecution has clearly established the offence punishable under Section 506 (ii) of the IPC against the 1st accused and under Section 305 of the IPC against the 2nd accused. Therefore, viewing from any angle, the present criminal appeal is liable to be allowed in part only with regard to findings in respect of Charge Nos.4 and 5.

In fine, this Criminal Appeal is allowed in part. The convictions and sentences passed against the 1st accused under Section 376 and 506(2) of the IPC, by the trial court are confirmed. Likewise, the conviction passed under Section 305 of the IPC against the 2nd accused is confirmed. However, the quantum of sentence imposed against her is modified as follows:-

"Considering the age of the 2nd accused, this court is of the view to impose 3 years rigorous imprisonment instead of 5 years."

The conviction and sentence passed under Section 305 of the



IPC by the trial court against the 1st accused are set aside. Likewise, the conviction passed under Section 376 read with 109 of the IPC against the 2nd accused are set aside. If the appellants/accused are not in duress, the trial court is directed to take appropriate steps so as to imprison them to serve out the remaining period of sentence."

Connected MPs closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1.The Additional Sessions Court (Fast Track Court),
Ariyalur.

2.-Do-Thro The Principle Session Court,
Perambalur.

3.The Judicial Magistrate,
Jayamkondam.

4.The Chief Judicial Magistrate,
Perambalur District.

5. The Inspector of Police, Andimadam Police Station
(Crime No.379/2004),Ariyalur District.

6.The Superintendent Central Prison,
Trichy.

7.The Public Prosecutor,
High Court Madras.

+lcc to M/S.P.V.Rajeswari, Advocate sr.64167

Crl.A.No.79 of 2006

srg 11/12/2015