

BAIL SLIP

The Appellant/Accused Viz., Logamurugan, S/o.Dhandapani was directed to be released on bail vide Order dated 22.12.2014 made in M.P.No.1 of 2014 in Crl.A.No.649 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

Crl.A.No. 649 of 2014

Logamurugan

... Appellant/Accused

Vs.

State Rep. By
The Inspector of Police,
All Women Police Station,
Udumalpet,
Tirupur District.
(Crime No.10 of 2013)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure to set aside the conviction and sentence passed by the Learned Sessions Judge, Magalir Neethimandaram, Fast Track Mahila Court, Tiruppur District dated 19.08.2014 made in Sessions Case No.167 of 2013.

For Appellant : Mr.M.N.Balakrishnan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

The Appellant / Accused has filed the present Criminal Appeal before this Court being dissatisfied with the Judgment dated 19.08.2014 in S.C.No.167 of 2013 passed by the Learned Sessions Judge, Magalir Neethimandaram, Fast Track Mahila Court, Thiruppur District.

2. The Learned Sessions Judge, Magalir Neethimandaram, Fast Track Mahila Court, Thiruppur District while passing the Impugned Judgment in S.C.No.167 of 2013 on 19.08.2014 at Paragraph No.42 had interalia observed that "But in this regard, if the evidence of P.W.1 was examined, she had stated that the Appellant / Accused had entered into the shed after pushing her, sat on her and when she made an attempt to escape, he pushed her, torn her jacket and also threatened her to the effect that

if she informs it outside, he would murder her. Furthermore, P.W.4 (Doctor), who conducted medical examination on P.W.1 had not deposed as to the indications found on the neck of P.W.1 as regards an attempt to commit murder. Moreover, P.W.4 also stated that P.W.1 had not informed him that a murder attempt was made on her. Under this circumstance, an offence against the Appellant under Section 307 r/w 511 of IPC that he made an attempt to murder P.W.1 was held to be not proved beyond reasonable doubt."

3. Apart from the above, the trial court at Paragraph No.37 of its Judgment had stated that "P.W.1 (victim) informed him that she had not indulged in sexual intercourse" and consequently came to the conclusion that the offence under Section 376 read with 511 of IPC and 452 of IPC were not proved with sufficient evidence.

4. Also at Paragraph No.36 of the Judgment the trial court proceeded to observe that "P.W.1 had deposed that the Appellant / Accused entered into the shed pushed her and sat on her. In fact, she had not deposed that the Appellant had asked her to satisfy his lust and in that process he made an attempt to commit rape on her." Therefore, the trial court came to the conclusion that the offence under Section 376 r/w 511 of IPC and Section 452 of IPC were not proved with sufficient evidence.

5. However, the trial court came to the conclusion that the Appellant was guilty in respect of an offence under Section 354 of IPC (which was proved beyond all reasonable doubt) and imposed a punishment of 5 years Rigorous Imprisonment besides imposing a fine of Rs.5,000/- in default of payment of fine, the Appellant was directed to undergo further six months Rigorous Imprisonment and the period already undergone by the Appellant was directed to be set off under Section 428 of Cr.P.C.,

6. Assailing the legality, validity and correctness of the Judgment dated 19.08.2014 in S.C.No.167 of 2013 passed by the Learned Sessions Judge, Mahila Court (Fast Track) Thiruppur District, the Appellant / Accused has filed the present Appeal by contending that the trial court failed to appreciate that the occurrence took place on 29.04.2013 and that the complaint was given on 30.04.2013 only and there is a delay of one day in filing the complaint.

7. At this stage, the Learned Counsel for the Appellant takes a stand that the Respondent / Prosecution had not explained the delay of one day in lodging the complaint and this aspect of the matter was not looked into by the trial court in a proper perspective.

8. The Learned Counsel for the Appellant submits that there is no evidence to connect the Appellant / Accused with the alleged crime and in fact, the trial court had committed an error in convicting the Appellant based on the evidence of P.W.1, without any corroboration.

9. The Learned Counsel for the Appellant urges before this Court that P.W.4 (Doctor), who examined the victim girl (P.W.1) had not supported the prosecution version.

10. It is represented on behalf of the Appellant that the trial court had failed to take into consideration that it was not possible for the Appellant to threaten the victim (P.W.1) that he would do away her life, if she had not cooperated with him in regard to the offence in question.

11. The Learned Counsel for the Appellant brings it to the notice of this Court that there is a vital contradiction in regard to the happening of occurrence at morning 6.00 a.m. and in fact P.W.1 (victim) had not mentioned the date, month and year. However, P.W.8 (Investigating Officer) also admitted that no occurrence took place at 6.00 a.m. and in view of the discrepancies, the trial court should have acquitted the Appellant in the present case.

12. The Learned Counsel for the Appellant contends that all the Documents and Material Object, viz., M.O.1 were sent to the Court after a lapse of four months and the same is fatal to the prosecution case.

13. The Learned Counsel for the Appellant takes a plea that the occurrence reportedly took place at 6.00 a.m. and that the complaint was preferred at 8.30 a.m., but the FIR reaches the Court only at 2.45 p.m. on the same day (the Court situated at the distance of 4 Kms from the Police Station) and in this regard no explanation was offered for the delay in question.

14. The Learned Counsel for the Appellant strenuously submits that P.W.1 (Victim) in her cross examination had deposed that prior to the occurrence also the Appellant / Accused had called her for sexual intercourse, but, she had not reported the same either to her husband or to the police. Therefore, an argument is projected on the side of the Appellant that the version of P.W.1 is an unbelievable one.

15. In response, the Learned Government Advocate (CrI.Side) for the Respondent / Complainant submits that the Appellant before the trial court was charged in respect of an offence under Sections 452, 354 376 r/w 511 and Section 307 r/w 511 of IPC and in the main case, before the trial court on behalf of the Respondent / Prosecution, witnesses P.W.1 to P.W.9 were examined and Ex.P.1 to Ex.P.11 were marked and M.O.1 was marked. That apart, it is represented on behalf of the Respondent / Complainant that the trial court, on an appreciation of the entire oral and documentary evidence available on record came to a resultant conclusion that the Appellant / Accused was guilty in respect of an offence under Section 354 of Indian Penal Code and awarded a punishment of Five Years Rigorous Imprisonment, besides imposition of fine of Rs.5,000/- in default of payment of fine, he was directed to undergo default sentence of Six Months Rigorous Imprisonment. In effect, the stand of the

Respondent / Appellant is that the Judgment of the trial court is a flawless one.

16. At this juncture, a perusal of Ex.P.1, complaint shows that it was mentioned by the complainant (P.W.1) that six years had elapsed after the marriage and that her first husband had expired and later she married one Rajeswaran (1 ½ years before) for the 2nd time and she has two female children through her first husband and that she is staying at Nithyanandam Garden at K.Valakundapuram along with her husband and children and that one Logamurugan son of Dhandapani (Appellant) when she used to cross Palaru for the purpose of proceeding to her work, he, on various occasions forced her to satisfy his lust, but she refused.

17. Apart from that P.W.1 (Complainant) in Ex.P.1, Complaint had proceeded to state that yesterday (on 29.04.2013) at 4.00 p.m., when she was taking the cow dung from the cattle shed / shalai Nithyanandam garden (where she was working) suddenly, the Appellant asked her to satisfy his lust and pushed her down, fell on her and torn her jacket and after removing in skirt attempted to spoil her. However, she informed the Appellant to leave her and she also had stated that she would inform her husband and relatives, for which the Appellant had stated that "only if you are left alive you would inform others" and by uttering 'get yourself finished' he got hold of her neck, by squeezing her neck attempted to commit murder and that she kicked him and by raising a noise she ran away and the Appellant ran away in fear.

18. Apart from the above, it is quite evident from contents of Ex.P.1, Complaint that P.W.1 (Complainant) had informed her garden owner, Nithyanandam about the incident and the garden owner wrote the complaint stated by her and after reading the same she affixed her thumb impression and after her husband returned from work, she lodged a complaint praying for action to be taken against the Appellant for attempting to commit rape and attempting to commit murder on her.

19. It is the evidence of P.W.1 (Complainant and victim) that she does not know the month, date and the year, but one year before at about 6.00 clock in the morning she was taking the cow dung from her garden cattle shed and she was residing in the cattle shed house at the said garden and that the Appellant suddenly entered into the cattle shed, entered her house and sat on her and when she made an attempt to escape, he pushed her and also torn her jacket and informed her that he would murder her if she spoke about the same outside and that out of fear she had given the complaint at Thali Police Station.

20. P.W.1 in her evidence proceeds to state that the Appellant two times had forced her to have intercourse with him but she had refused and that was the reason why he sat on her and she does not know to write and read and the thumb impression found in the complaint, Ex.P.1 belong to her and the jacket worn by her was M.O.1.

21. P.W.1 (in her cross-examination) had deposed that on the day of occurrence, except herself no body was there and that on the day of occurrence she had not seen any one coming and she had handed over her jacket on the next day of complaint.

22. P.W.2 (Garden Owner) in his evidence had stated that P.W.1 is working in his garden and that he know the Appellant / Accused and on 29.04.2013 at about 6.00 p.m., P.W.1 was crying and his garden's name is 'Ayanar Garden' and P.W.1 informed him that when he was inside the cattle shed, the Appellant / Accused came there pushed her down and attempted to rape her and at that time when she attempted to escape, he informed that he would murder her.

23. Further, P.W.2 in his evidence had stated that he had only written Ex.P.1, Complaint and also read the contents of the complaint and later he took her to Udumalai Hospital and that he was examined by the police on 30.04.2013.

24. It is the evidence of P.W.3 (Junior Scientific Officer of Forensic Department) that on 14.05.2013, in Crime No.10 of 2013 of All Women in Udumalaipet Police Station, he received the articles 1. Vaginal smear 2. Nail pieces (which was taken at the time of medical examination of Dhanalakshmi - P.W.1) and he examined the same and found that there was no sperms in the vaginal smear and even in the vaginal smear, sperm stains were not there and also in the nail pieces blood stain nor sperm stain and other tissue were found etc.,

25. Added further, P.W.3 had deposed that at the time of medical examination of Dhanalakshmi (P.W.1) he received, the vaginal smear, nail pieces and examined the same. Further, he received the sperm stained head hair etc., and subjected them to examination and thereafter gave Ex.P.4, Report stating that he could not give any comparative opinion of the three types of hair and the report given in favour of Dhanalakshmi, P.W.1 was Ex.P.4 and the report given in favour of the Appellant was Ex.P.5

26. P.W.4 (Doctor) in her evidence had deposed that on 30.04.2013 at about 5.00 P.M., Dhanalakshmi (27) (P.W.1) was brought by a lady constable no.1119, Sumathi and the Accident Register was entered by Doctor, Vanaja and that P.W.1 was produced before her for medical examination and on examination, P.W.1 informed her that on 29.04.2013 at about 4.00 p.m., in the evening at Valakundapuram, in her garden, a known person attempted to commit rape on her and that he had not indulged in sexual intercourse. In fact, she had given Accident Register Copy Ex.P.6 and final report Ex.P.7 and she was examined by the Police.

27. P.W.5 (Doctor) in his evidence had deposed that on 10.05.2013 when he was on duty, Head Constable (Sriragavan - 1439) brought the Appellant aged 28 from Valakundapuram for the purpose of Potency Examination and after examining him, he gave a certificate Ex.P.9.

28. P.W.6 (Head Constable) in his evidence had deposed that he along with Grade I Constable Veeragavan on 10.05.2013 based on the order of the Inspector of Police, All Women Police Station, Udumalai, after reporting to the Learned Judicial Magistrate No.I, subjected the Appellant before the Medical Officer of the Udumalai Government Hospital after taking him from the Udumalai Sub-Jail and after completion of medical examination again he was handed over to the Udumalai Sub Jail Authorities and he handed over the properties collected from the Appellant to the Coimbatore Forensic Science Laboratory on 14.05.2013.

29. P.W.7 (Sub Inspector of Police) in his evidence had deposed that on 30.04.2013 at about 13.00 hrs in the afternoon, when she was at the Udumalaipet All Women Police Station, as incharge, Dhanalakshmi wife of Rajeswaran Valakundapuram appeared before her and gave a written complaint and based on the said complaint, she had registered a case in Crime No.10 of 2013 under Sections 448, 376 read with 511 and Section 307 of IPC and that Ex.P.10 was the FIR and also transmitted the Original FIR and the complaint of complainant to the Learned Judicial Magistrate, Udumalai and further that sent a copy of FIR to the Investigating Officer of All Women Police Station and other copies were sent to the concerned officers.

30. P.W.8 (Inspector of Police) in her evidence had deposed that she received FIR registered by the P.W.7 in Crime No.10 of 2013 of Udumalai Police Station under Sections 448, 376 read with 511 and Section 307 of IPC on 30.04.2013 at 13.45 hrs and examined Dhanalakshmi (Appellant-P.W.1) Nithyanandam (P.W.2), Rajeswaran and recorded their statements and at about 14.30 hrs, she went to the scene of occurrence and examined Witnesses Janakiraman, Nithyanandam (P.W.2) and in their presence prepared the Observation Mahazar, Ex.P.2 and Rough Plan, Ex.P.11 and at 11.15 hrs in the presence of witnesses, she seized the jacket of the P.W.1 in the presence of witnesses and at about 13.45 hrs at Vallakundapuram, she arrested the Accused (on being identified) by the witness and brought him to the police station at 16.30 hrs and sent him to judicial custody.

31. It is the further evidence of P.W.8 that she sent P.W.1 (the affected victim) through constable 1119, Sumathi vide memo for the purpose of medical examination and gave a request letter to the Learned Judicial Magistrate No.I, Udumalai to conduct medical examination on the Appellant and since she was transferred to Pollachi Police Station, she handed over the case file to Anantha Nayagi.

32. P.W.9 (Inspector of Police) in her evidence had deposed that after taking up the investigation of the case on 08.07.2013 she examined Sumathi, Woman constable (1119), Parameswaran (P.W.6), Head Constable, Veeragavan Grade I Constable and recorded their statements an also on 13.07.2013 she examined Dr.Manjula, (P.W.4, Assistant Doctor of Government Hospital, Udumalai) Venkatashwaran, Junior Forensic Science Inspector

(P.W.3) of Coimbatore and recorded their statements and that on 11.08.2013 after obtaining opinion from the Deputy Director of prosecution, she laid the final report in the case.

33. It is to be borne in mind that the delay in despatch of FIR to the Learned Judicial Magistrate is not fatal in every case. In fact, the prosecution case may not be thrown out for non-compliance of Section 151 of Cr.P.C., Ordinarily, in every case from the sheer delay in transmitting FIR to the Magistrate, the Court of Law would not come to the conclusion that the First Information Report was recorded much later in time than the one shown. Apart from that where the evidence is reliable mere delay in despatch of FIR to the concerned Court is of no significance, in the considered opinion of this Court.

34. No wonder, the documents like Original Complaint under Section 154 of Cr.P.C., Printed Form of FIR, Statements of Witness, Inquest Report, Memo sent by the Station House Officer to the Doctor for treatment of injured persons, Observation Mahazar, Recovery Mahajar, such lists statements admissible under Section 27 of the Indian Evidence Act, statements recorded under Section 161 of Cr.P.C., and Form No.91 accompanied by material objects etc., are to be transmitted to the concerned court / authority without any delay by the Investigating Officer etc., as per decision of this Court in Inre Karunakaran and Another reported in 1975 CRILJ at Page 798. As a matter of fact, the precise time and date of despatch of documents ought to be noted. More importantly this Court in the aforesaid decision at Page 799 had observed the following:-

"The High Court also stressed the desirability and need for preserving the pocket diaries of the investigating officers, the entries in the general diaries and the despatch book with more elaborate details for atleast five years."

35. It is to be pointed out that to constitute an offence under Section 354 of Indian Penal Code there ought to be an assault or use of criminal force to any woman with an intention or knowledge that the said woman's modesty would be outraged. It cannot be gainsaid that an indecent assault upon a woman is punished under Section 354 of Indian Penal Code. In order to constitute an offence under Section 354 of Indian Penal Code, mere knowledge that the modesty of a woman is likely to be outraged is enough without any deliberate intention of such outrage alone for its object. It is true that a Court of Law is to adopt a careful approach in regard to case of purported outrage of modesty.

36. In this connection, it is not out of place for this Court to make a significant mention that an intention is not the sole criterion of the offence punishable under Section 354 of IPC. However, it can be committed by an individual using a criminal force to any woman or assaulting her. The existence of an intention or knowledge is to be culled out from several circumstances in which and upon whom the alleged offence is alleged to have been committed. The culpable intention of the

accused is the gist of the matter, of course, the essence of the women modesty is per se.

37. One cannot brush aside the following features of an offence under Section 354 of IPC,

- a) That the assault must be on a woman
- b) That the Accused should be used a criminal force on her
- c) That the said criminal forces should have been used on the women intending thereby to outrage her modesty.

38. For a conviction under Section 354 of IPC it is not just enough to show that the accused assaulted woman, also it must be further proved beyond reasonable doubt that he did so either with an intention to outrage her modesty, or with the knowledge that it was likely that he would thereby outrage her modesty.

39. As far as the present case is concerned, the evidence of P.W.1 (Complainant - victim) was to the effect that the Appellant suddenly entered into the cattle shed and sat on her and further she had not adduced any evidence to show that any preparations were made for committing the crime and later indulged in the said crime, therefore, this Court is in complete agreement with the view taken by the trial court that the offence under Section 452 of IPC against the Appellant / Accused was not proved on the side of the Respondent / Prosecution.

40. Likewise, since P.W.1 had only deposed in her evidence that the Appellant / Accused had entered into the cattle shed, after pushing her, sat on her and inasmuch as she had not stated in her evidence that the Appellant had not attempted to rape her, with a view to satisfy his lust and that apart this Court bearing in mind the evidence of P.W.4 (Doctor) that the P.W.1 (Victim) had informed him that she had not had sexual intercourse with the Appellant, without any haziness this Court comes to an irresistible conclusion that the charge under Section 376 read with 511 was not proved against the Appellant / Accused.

41. Insofar as the offence under Section 307 r/w 511 of IPC is concerned, P.W.1 had only stated that the Appellant after entering into the cattle shed, pushed her inside and sat on her and when she attempted to escape, he torn her jacket and that only he threatened her on murdering her. In reality, she had not uttered in her evidence (like the one mentioned in Ex.P.1, Complaint) that if she was left alive only she would inform others and also you get finished, and also by so saying strangulated her neck, an attempt was made to murder her.

42. Therefore, in view of the aforesaid evidence of P.W.1 and coupled with the evidence of P.W.4, who had stated that around the neck of P.W.1, there were no indication for an attempt to murder her, this Court comes to an resultant conclusion that the charge / offence under Section 307 read with 511 of IPC was not proved against the Appellant. Therefore, the Appellant was rightly acquitted in this regard.

43. But at the same time, in view of the categorical evidence of P.W.1 (victim -complainant) that the Appellant / Accused entered into the cattle shed pushed her and sat on her and when she made an attempt to escape from the said place, the Appellant had again pushed her and torn her jacket etc., this Court holds that the Respondent / Prosecution established the case against the Appellant beyond all reasonable doubt. In this regard this Court concurs with the view arrived at by the trial court.

44. It is not out of place for this Court to make a pertinent mention the act of pulling a woman, removing her dress coupled with the request for sexual intercourse is such as would be an outrage to the modesty of a woman and mere knowledge that the modesty of a woman is likely to be outraged is just enough to constitute the offence without any deliberate intention of such outrage alone for its object.

45. In the upshot of aforesaid detailed discussions and also this Court taking note of the entire conspectus of the facts and circumstances of the present case in an encircling manner comes to an inescapable conclusion that the Appellant / Accused was rightly found guilty by the trial court in respect of an offence under Section 354 IPC. In reality, the trial court had awarded a punishment of five years Rigorous Imprisonment and also imposed a fine of Rs.5,000/- upon the Appellant besides imposing a default sentence.

46. Considering the fact that the Appellant / Accused has got married after the occurrence and also has wife and two female children to backup, this Court reduces the punishment of Five Years Rigorous Imprisonment to that of 1 ½ years Rigorous Imprisonment. In regard to the imposition of fine of Rs.5,000/- upon the Appellant by the trial court, the same is not dislodged by this Court at this distance point of time, consequently, the Criminal Appeal succeeds in part.

In fine, the Criminal Appeal is allowed in part. The Judgment of the Learned Sessions Judge, Magalir Neethimandaram, Fast Track Mahila Court, Thiruppur District in S.C.No.167 of 2013 dated 19.08.2014 stands modified in above terms. The Learned Sessions Judge, Magalir Neethimandaram, Fast Track Mahila Court, Thiruppur District is directed to secure the presence of the Appellant / Accused and to immure him in prison to serve the remaining period of the sentence.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Magalir Neethimandaram,
Fast Track Mahila Court,
Tiruppur District.
2. The Principal District & Sessions Judge,
Tiruppur.
3. The Judicial Magistrate No.I,
Udumalpet.
4. Do The Chief Judicial Magistrate,
Tiruppur.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The District Collector,
Tiruppur.
7. The Director General of Police,
Mylapore, Chennai.
8. The Inspector of Police,
All Women Police Station,
Udumalpet,
Tiruppur District.
9. The Public Prosecutor,
High Court, Madras.
10. The Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.8403

Cr1.A.No.649 of 2014

MSM(CO)
CA(28/02/2017)