



BAIL SLIP

The Ist Petitioner Sakthivel, S/o.Ramasamy and the second petitioner Sundaram, S/o.Ramasamy, were directed to be released on bail vide order of this court dated 26.05.2016 made in CrI.MP.No.2253 of 2016 in CrI.RC.No.83 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CrI.R.C.No.83 of 2014

and

CrI.M.P.No.7617 of 2017

1. Sakthivel

2. Sundaram

3. Seenu @ Seenuvasan

... Petitioners

//vs//

Union Territory of Puducherry

rep. By

Station House Officer,

Thavalakuppam Police Station,

Puducherry,

Crime No.104/2001

... Respondent

Prayer : Criminal Revision filed under sections 397 read with 401 of Criminal Procedure Code to call for the entire records relating to the impugned common order dated 20.11.2013 passed in CrI.A.No.38 of 2006 on the file of the Hon'ble II Additional Sessions Judge, Pondicherry, confirming the common order dated 10.03.2006 passed in S.C.No.79 of 2003 on the file of the Assistant Additional Sessions Judge cum Chief Judicial Magistrate, Pondicherry and set aside the same and consequently allow the Criminal revision case and thereby set the petitioners free at large.

For Petitioner	:	Mr. Prakash Adiapadam
For Respondent	:	Mr.M.R.Thangavel, Public Prosecutor, Pondicherry.



O R D E R

A1 to A3 in S.C.No.79 of 2003 on the file of the Assistant Sessions cum Chief Judicial Magistrate Court, Pondicherry, are the accused herein. Totally, there are 5 accused. They stood charged for the offences under Sections 448, 342, 323, 366 and 376(2)(g) r/w. 34 IPC. The trial Court, by a judgment dated 10.03.2006, convicted A1 to A4 and sentenced them as detailed below :-

Accused	Section of law	Sentence
A.1 to A.3	448 r/w. 34 I.P.C.	Rigorous imprisonment for 6 months
A.1 to A.3	323 r/w.34 I.P.C.	Rigorous imprisonment for one year
A.1 to A.3	342 r/w.34 IPC	Rigorous imprisonment for 6 months.
A.1 to A.3	366 r/w. 34 IPC	Rigorous imprisonment for 5 years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for two months
A.1 to A.3	376 (2)(g) IPC	Rigorous imprisonment for 7 years and to pay a fine of Rs.500, in default, to undergo simple imprisonment for one month.
A.4	448 IPC	Rigorous imprisonment for one year
A4	354 IPC	Rigorous imprisonment for one year
A4	366 IPC	Rigorous imprisonment for 2 years

The trial Court has ordered the above sentences to run concurrently and A5 was acquitted from all the charges. Challenging the said conviction and sentence, A1 to A4 filed an appeal in CrI.A.No.38 of 2006 on the file of the II Additional Sessions Court, Pondicherry, and the lower appellate Court, by a



judgment dated 20.11.2013, confirmed the conviction and sentence and dismissed the appeal. So A4 is concerned, pending appeal, he has undergone the period, and he was given set off. Now, challenging the above conviction and sentence, the petitioners/A1 to A3 are before this Court with this revision.

2. The case of the prosecution in brief is as follows: -

P.W.1, one Parameswari is the victim in this case. She was residing at No.18, Thideer Nagar, Pooranankuppam. On 13.08.2001, at about 24.00 hours, all the 5 accused trespassed into her house unlawfully with an intention to commit rape and they have abducted her and took her behind her house and when P.W.2, her son, who was also present in the house, was trying to prevent them, they tied him with a rope in a wooden post in her residence and also caused simple injuries. Then, A3 assaulted her and pushed her down and committed rape. Thereafter, other accused took her to another place, where A1 has committed rape, and A2 also attacked her with stick and he also committed rape and then they left the place and at about 5.00 a.m., she recovered conscious and managed to go to the house of one Rani/P.W.4 and she informed the occurrence to P.W.3, her uncle. Thereafter, she went to the police station and given a complaint. Based on her complaint, P.W.16 Inspector of Police, registered the case in crime No.104 of 2001 for the offence under Sections 448, 324, 342, 366 and 376 (2)(g) r/w.34 IPC and prepared First Information Report (Ex.P.26) and then, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P.27) and drew a Rough Sketch in the presence of P.W.6 and another witness. Then, he sent the victim to the Government Hospital, Pondicherry for medical examination and he recorded the statement of other witnesses.

3. P.W.11, Doctor, working in the Government Hospital, Pondicherry, examined the victim and found a small abrasion near the breast and right thigh and another abrasion in the knee and small abrasions all over the body and also bleeding found in the private part of the victim and she was of the opinion that the victim was subjected to sexual intercourse, and she found the following injuries:

1. Upper jaw left central incisor - discoloured and shaking
2. Upper jaw left lateral incisor slightly shaking
3. No foreign bodies or matter could be visualized on the body
4. No external injuries could be visualized on the breasts or on the vulva or inner side of thighs.

The following injuries on the person was seen:

1. One big contusion 11 x 6 cm on the outer



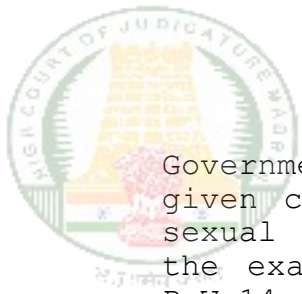
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- aspect of middle 1/3 rd of left thigh, another 2 x 2 cm contusion just adjacent to it on the left thigh.
2. A contusion with abrasion of 4 x 3 cm over outer aspect of left leg above the ankle joint.
 3. Abrasions of 1 x 1 cm over left lateral malleolus and on the heel of left leg, near archilles tendon.
 4. A small abrasion 1 x 1 cm over right back just above loin.
 5. Small nail marks sen on the epigastrium and below right breast and on the left cheek.
 6. Left eye had a small subconjunctival haemorrhage 2 x 1 mm and eyelids and cheek area surrounding left eye was mildly contused.
 7. Left side of upper lip was oedematous and mucosa was contused. Two teeth were mildly shaky on the left upper jaw."

Thereafter all the accused were arrested and they have also been subjected to medical examination. P.W.12, Doctor, working in the Government Hospital, had given a opinion that they are capable of sexual intercourse. Then after recording the statement of the witnesses final report has been filed.

4. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment and the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 17 witnesses were examined and 35 documents were exhibited and 4 material objects were marked.

5. Out of the witnesses examined, P.W.1 is the victim in this case. According to her, while she was sleeping in her house, all the accused trespassed into her house and took her to the nearby field, and A1 and A2 rapped her and also caused injuries. P.W.2 is the son of P.W.1, who was also available in the house at the time of occurrence and according to him, all the accused trespassed into her house and forcibly abducted his mother and he raised objection and they tied him in a pole and attacked him. P.W.3 is brother-in-law of P.W.1 and he turned hostile. P.W.4, neighbour of P.W.1, also turned hostile. P.W.5 is the mother of P.W.1. According to her, on the next day morning, 6.00 a.m., when she went to the house of the victim, she found P.W.2 tied with a rope in a pole and thereafter, P.W.1 came and informed her about the occurrence. P.Ws, 6, to 10 turned hostile. P.W.11, Doctor, working in the Government Hospital, Pondicherry, examined P.W.1 and has given a medical certificate (Ex.P.15). P.W.12, Doctor, working in the



Government Hospital, Pondicherry, examined the accused and has given certificates stating that the accused are all capable of sexual intercourse. P.W.13, another Doctor, has spoken about the examination conducted to the accused based on the record. P.W.14 Photographer, has taken photographs(Ex.P.22) on the place of occurrence. P.W.15, Assistant Sub-Inspector of Police, P.W.16, Inspector of Police, has spoken about the registration of case and commenced the investigation. P.W.17, Inspector of Police, continued the investigation and after completion of investigation, he filed a final report.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On the side of the accused, one Devadoss was examined himself as D.W.1. According to him, P.W.1 is a lady of loose morals and she has given a false complaint against the accused, Accused did not mark any documents.

7. Having considered all the above materials, the trial Court convicted the accused 1 to 4 as mentioned in paragraph one of the judgment and acquitted A5 from the offences. Aggrieved against the same, Accused 1 to 4 filed an appeal in C.A.No.38 of 2006 before the II Additional District and Sessions Court, Pondicherry and the lower appellate court confirmed the conviction and sentence and dismissed the appeal. Now challenging the same the present revision has been filed by A1 to A3.

8. I have heard Mr.Prakash Adiapadam, learned counsel appearing for the petitioners and Mr.M.R.Thangavel, learned Public Prosecutor, Pondicherry, appearing for the respondent.

9. The learned counsel appearing for the petitioners would submit that P.W.1 is the victim and her evidence is not corroborated by the medical evidence. Eventhough P.W.1 has stated that A1 to A3 has raped her and medical report is not corroborated her evidence and there is no symptom of gang rape on her. Apart from that other independent witnesses were turned hostile and the evidence of P.W.1 is not trustworthy and it cannot be formed basis for conviction of the petitioners. DW.1 was the president of the same village and he has spoken about the character of P.W.1. The Court below without considering all those materials had convicted the petitioners.

10. Per contra, the learned Public Prosecutor, appearing for the respondent would submit that P.W.1, victim, clearly deposed that while she was sleeping in her house, all the accused trespassed into her house and took her to the nearby field, where A1 to A3 raped her and medical evidence also corroborated her evidence and stated that various injuries found on her body. P.W.2, her son also present in the scene of



occurrence. He has also spoken about the fact that the petitioners/accused entered into her house and abducted P.W.1. Eventhough the other witnesses turned hostile, the evidence of P.Ws.1 and 2 is consistent and it is trustworthy as medical evidence also corroborated her evidence, there is no reason to disbelieve the evidence of her. Considering all the materials, Courts below rightly convicted the accused and there is no reason to interfere with their findings.

11. I have considered the rival submissions and perused the materials available on record carefully.

12. The occurrence took place in the mid night, where P.W.1 and P.W.2, the victim and her son were sleeping in her house. According to P.W.1, all the accused trespassed into her house and forcibly abducted her. When P.W.2, her son resisting the same, they have beaten him and tied him in a pole with a rope. According to P.W.1, she was taken to a nearby field and A1 raped her, when she resisted, he attacked her. Thereafter, A2 took her to another place and he also committed rape and then, A3 came there and he also raped her and left her there. On the next day morning, at about 5.00 a.m., she recovered and informed the same to her mother P.W.5 and her uncle P.W.4, immediately, she has lodged a complaint before the respondent police and on the very same day, she was subjected to medical examination. The Doctor has also given a opinion that she was subjected to intercourse and she has also found as many as 7 injuries all over the body and she also found the upper jaw lateral incisor slightly shaken. P.W.2, her son, who was also present in the scene of occurrence, has clearly deposed that while he was sleeping inside the house, all the accused trespassed into their house and the accused forcibly abducted his mother and when he intervened, they attacked him and they tied him in a pole with a rope and then, he slept there. On the next day morning at 6.00 o clock, his grandmother, P.W.5 came and thereafter they found his mother and lodged a complaint. P.W.5 is the mother of P.W.1 and she has corroborated the evidence of P.W.2 saying that on the next day at about 6.00 a.m., she went to the house of P.W.1 and she saw that P.W.2 was tied in a pole and he informed her about the occurrence. Then, she took him to her another daughter's house, where she found P.W.1. Thereafter, they lodged a complaint. Even though P.Ws.3, and 4, who are related to P.W.1 turned hostile. P.Ws.1 and 2 consistently stated that all the accused trespassed into their house and attacked her and forcibly abducted her, thereafter raped P.W.1.

13. It is settled law that in these kind of cases of gang rape, the evidence of the victim is sufficient to convict the accused, provided her evidence is genuine and trustworthy. In the instant case, P.W.1 has clearly deposed about the



occurrence and the medical evidence also corroborated her evidence, which is also supported by the evidence of P.W.2, and nothing was brought on record to disbelieve the evidence of P.W.1. Both the Courts below considering the evidence in detail, concurrently came to a conclusion that it is only the accused had committed rape and convicted them. Even though DW1 has spoken about the character of P.W.1, but, on that ground alone, we cannot disbelieve the evidence of P.W.1. In the above circumstances, I have also carefully considered the entire materials available on records and I am of the considered view that the prosecution has established the guilt of the accused beyond any reasonable doubt and the Courts below rightly came to a conclusion that the petitioners have committed the offence. Hence, I find no reason to interfere with the well considered judgment of the Courts below.

14. So far as the quantum of sentence is concerned, the learned counsel appearing for the petitioners would submit that A1 in this case is suffering from kidney failure and also liver decease and he is in very bad health condition and he has been inside the jail for more than 3 ½ years and A2 also was sick patient and he has also produced medical certificate to that effect and he has also undergone surgery and also produced medical certificate to that effect and he is also inside the jail for more than 3 ½ years. A3 is now undergoing imprisonment for more than 4 ½ years and he is still in jail and all of them have a big family to maintain. Apart from that the occurrence took place in the year 2001, and the accused had no bad antecedents. Considering all these mitigating as well as aggravating circumstances, I am of the considered view that the period of sentence already undergone would meet the ends of justice.

15. In the result, the Criminal Revision is partly allowed and the conviction imposed by the Courts below on the petitioners/A1 to A3 for the offences under Sections 448 r/w. 34, 323 r/w.34, 342 r/w.34, 366 r/w.34 and 376(2)(g) of IPC are confirmed and the sentences imposed on them by the courts below are modified to that of the period already undergone by them. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mrp



To

1. II Additional Sessions Judge,
Pondicherry,

2. do Thro The Principal Sessions Judge,
Puducherry

3. The Assistant Additional Sessions Judge cum Chief Judicial
Magistrate, Pondicherry.

4. The Station Officer
Thavalakuppam Police station
Puducherry

5. The Superintendent
Central Prison Kalapet Puducherry

6. The District Collector
Puducherry

7. The Director General of Police
Mylapore Chennai-4

8. The Public Prosecutor,
High Court, madras.

copy to

The Section Officer
Crl. Section
High Court Madras

+1 cc to M/s. Prakash Adiapadam Advocate sr 73949

Crl.R.C.No.83 of 2014

mp(co)
aa12/6/2018