

Bail Slip

The Appellant/Accused namely sankar, S/o.Arumugam, was directed to be released on bail as per the order of this Court dated 22.07.2010 in CrI M.P.Nos.1/2 of 2010 in crl.Appeal No.412 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.01.2017	Delivered on : 31.01.2017
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CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.412 of 2010

Sankar

... Appellant/Accused

vs.

The State

rep. By Deputy Superintendent of Police

Villupuram Sub Division

Villupuram

Crime No.244 of 2008

Kaanai Police Station

... Respondent/Complainant

Criminal Appeal filed under 374 (2) cv.p.c against the judgment dated 23.06.2010 passed in S.C.No.140 of 2009 on the file of Special Court (Principal Sessions Judge) Villupuram Sessions Division, Villupuram.

For appellant : Mr.R.Rajasekaran

For Respondent : Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in S.C.No.140 of 2009 on the file of Special Court (Principal Sessions Court) Villupuram Sessions Division, Villupuram. He stood charged for offences under Sections 376 r/w.511 IPC read with Section 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter called as SC/ST Act). By judgment dated 23.06.2010, the trial court convicted him under Sections 376 read with 511 IPC read with 3(2)(v) of the the

SC/ST Act and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.20,000/- in default to undergo simple imprisonment for one year. Aggrieved over the finding of the trial court, the appellant has come forward with this appeal seeking to set aside the finding of conviction and sentence imposed on him.

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

(a) The accused is the resident of Ponnangkuppam Village in Villupuram District. The victim girl PW1-Amudha was studying in 8th standard and she used to go to school regularly in bicycle. While so, on the occurrence day, while she was on her way back home from school, at about 5 p.m., the accused met her on the way and asked the victim girl to give him the cycle, but on her refusal to do so, the accused offered to ride the cycle and take her along with him to her village. Since the accused was known to her, the victim girl agreed and accompanied him by sitting in the back of the cycle. When they reached Kangeyanur Lake, the accused got down from the cycle and forcibly pressed her breast and abused her. Even though the victim girl shouted, as there was nobody nearby, none witnessed the occurrence and the victim girl forcibly took the bicycle and went to her home and informed her father about the behaviour of the accused. She was taken to Villupuram Government Hospital by her parents and the complaint was lodged by her father P.W.2-Venkatesh with the police about the occurrence.

(b) According to the prosecution, on the date of occurrence, the victim girl was a minor and she belonged to SC/ST community, while the accused belonged to a Backward Vanniyar community. The parents of the victim girl who deposed as P.W.2 and P.W.3, stated that their daughter P.W.1-Amudha was studying 8th standard and used to go to school by cycle regularly and return back by 5.30 p.m. Both P.W.2 and P.W.3 stated that they knew the accused and he belongs to their village.

(c) P.W.2-Venkatesh stated that 2 years back one evening while he was at home, his daughter P.W.1-Amudha came back weeping at about 5.15 p.m., and informed him that the accused caught hold of her breast and abused her physically. Immediately he informed his wife and then took P.W.1-Amudha to Government Hospital, Villupuram, and admitted her. Thereafter, he lodged Ex.P.1-complaint with the Inspector of Police, Kanai Police Station.

(d) P.W.10, stated that while he was working as Inspector of Police, Kanai Police Station, on 29.07.2008, at about 1 p.m., P.W.2- Venkatesh lodged a complaint and on receipt of the same, a case in Crime No.244/2008 was registered in Kanai Police Station, under Sections 376, 511 IPC read with 3(1)(xi) of SC/ST

Act and immediately he forwarded the FIR to the concerned authorities and submitted the copy of the FIR to the concerned Deputy Superintendent of Police for further investigation.

(e) The Deputy Superintendent of Police, who deposed as P.W.11 stated that on 29.07.2008, he took up the case registered in Kanai Police Station Crime No.244/2008 for investigation and on the same day, at 6 p.m., reached the occurrence spot and prepared rough sketch-Ex.P.9 and examined the witnesses and recorded their statements. Subsequently on 30.07.2008, at 10 a.m. he arrested the accused and sent him for medical examination. He obtained community certificate of both the accused and the victim girl and recorded the statement of Thasildhar who issued the community certificates. After recording the statement of doctors who examined the victim girl as well as the accused, completed the investigation and laid the charge sheet.

(f) The doctor who examined the accused while deposing as P.W.6 stated that on 30.07.2008, he examined one Sankar in respect of Kanai Police Station Crime No.244/2008 and certified that the said person is not impotent. The certificate issued by him is produced as Ex.P.4. Another doctor who deposed as P.W.4 has stated that he examined one Sankar S/o.Arumugam, the accused herein on 31.07.2008 and after taking x-ray determined the age of the accused as 22 years and the certificate issued by him is Ex.P.2. Similarly the doctor who examined the victim girl deposed as P.W.9 and stated that on 28.07.2008, while on duty at Villupuram Government Hospital, at 10.45 p.m, P.W.1-Amudha was brought by her parents and on examination, she found no external injuries on her breast. P.W.9 also stated that there was no trace of blood or seminal stains either on the body of the patient or on her dress. P.W.9 further stated that no sperm was found and hymen of the victim girl was intact. The report given by her is produced as Ex.P.7.

(g) Further the prosecution examined P.W.7-Thasildar who deposed that he issued Ex.P.5-community certificate stating that the victim girl Amudha belongs to Irular community which comes under Scheduled Caste. Likewise, P.W.8 who worked as Thasildar at the relevant point of time, stated that he issued Ex.P.6 certificate stating that the accused-Sankar belongs to Backward caste Hindu Vanniyar community.

(h) On completion of investigation, the Investigating Officer of the case-P.W.11 filed the charge sheet against the accused.

3. Based on the above materials, the trial court framed charges under Section 376 r/w. 511 IPC and under Section 3(2)(v) of the SC/ST Act and the same was denied by the accused. In order to prove the case, on the side of the prosecution, P.Ws.1 to 11 were examined as witnesses and documents Ex.P.1 to Ex.P.9

were produced before the trial court.

4. On completion of trial, when the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the defence, no witness was examined and no document was marked.

5. Having considered all the above, the trial court held the accused guilty and convicted him for offence under Section 376 r/w.511 IPC read with Section 3(2)(v) of the SC/ST Act. Aggrieved over the finding of the trial court, the accused has come forward with this appeal seeking to set aside the finding of the trial court on the ground that there is no other eyewitness to the occurrence except P.W.1-Amudha and her evidence is not believable. It is pointed out that the medical evidence did not support the prosecution case and the trial court failed to take into consideration the said aspect. It is also contended by the learned counsel for the accused that there is no material to prove the offence u/s.376 IPC and nothing is on record to prove the charge u/s.3(2)(v) of SC/ST Act and the finding of the trial court is erroneous and not supported by material. Hence the appellant seeks to set aside the conclusion arrived at by the trial court and to allow the appeal.

6. The fact that the alleged victim girl P.W1-Amudha belongs to Scheduled Caste Irular community and the accused belongs to Most Backward class Vanniyar community, is not disputed and the same is established by the evidence of P.W.7 and 8 and the certificate produced by them in Exhibits P.5 and P.6 respectively. It is alleged by the prosecution that on the occurrence day, while the victim girl was on her way back from school to her house, the accused took her in bicycle and near the Kangeyanur lake, the accused caught hold of her breast and rubbed it and abused her. Even as per the averments in Ex.P.1-complaint and the evidence of P.W.1-victim girl, there is nothing on record to show that the victim girl was raped by the accused. Evidence of P.W.9-Dr.Sathyapriya who examined the victim girl is clear cut and according to her, there is no symptom of physical intercourse by the accused with the victim girl.

7. The contents of Ex.P.7-certificate does not help the prosecution to establish the alleged incidence of rape on the victim girl by the accused. The father of the victim girl P.W.2-Venkatesh who is the complainant stated that after taking his daughter-Amudha to Government Hospital, Villupuram on the occurrence day, he went to the police station and lodged the complaint on the next day. The said complaint is produced as Ex.P.1. In the complaint also, it is not stated that the accused tried to rape the victim girl. Thus, as rightly pointed

out by the learned counsel for the accused, the finding of the trial court that the accused committed an offence under Section 376 IPC, is unsustainable.

8. According to the complainant P.W.2-Venkatesh, who is the father of the victim girl, the contents of the complaint was written by one Balamurugan and he does not know the details of the complaint. P.W.2 also stated that since he was asked by Balamurugan to sign, he signed in the complaint. Thus, the contents of Ex.P.1-complaint is not known to the complainant P.W.2-Venkatesh. On the other hand, the victim girl-P.W.1 stated that the complaint was written by her father and the complaint was lodged in the Police Station before they went to hospital. As stated earlier, the complaint is given only on 29.07.2008, after the victim girl was admitted in the hospital on 28.07.2008 night itself. In such circumstances, doubt arises as to by whom the complaint was written and when it was actually given to the police.

9. Now, it is to be seen whether the occurrence as alleged in the complaint took place. The victim girl P.W.1 stated that on the fateful day, while she was on her way back from school to her house, at about 5 p.m., the accused came on the way and asked her to handover her bicycle to him, but she refused to do so and thereafter, the accused offered to ride the bicycle and to drop her at home. Accordingly, she went with him in the bicycle and as they went near Kangeyanur lake, the accused got down and she also got down from the cycle and the accused caught hold of her breast and pressed it and abused her. According to P.W.1, there is nobody at that place. She forcibly took the cycle and reached home. P.W.1 categorically stated that at the occurrence spot, nobody was present and none of her co-students came along with her. On the other hand, P.W.2/complainant stated that her daughter normally used to go to school along with 10 to 15 students and on the occurrence date, her daughter informed him that about 10 to 15 students saw the occurrence. P.W.2 also stated that he informed the police during enquiry the details of the persons, who saw the occurrence. P.W.2 also stated that near the occurrence spot, there will be movement of people always and when he took her daughter to the hospital, he saw people working near the occurrence spot. Further P.W.2 stated that on his way to the hospital with her daughter, he informed the police about the details of the occurrence. However, as stated earlier, the complaint is lodged only on 29.07.2008, the day after the alleged occurrence. In such circumstances, it is contended by the learned counsel for the accused that earlier information given to the police was suppressed and that Ex.P.1-complaint is a fabricated one for this case.

10. As stated above, P.W.1 stated that that none saw the occurrence; while her father P.W.2 contradicted her by stating that 10 to 15 students saw the occurrence and he had furnished the names and other details to the police. However, Ex.P.1-complaint does not contain any of those details. In such circumstances, P.W.1 and P.W.2 have contradicted each other as narrated above and thus doubt arises as to whether really the occurrence as alleged by the prosecution took place.

11. The learned counsel for the accused also contended that the occurrence is stated to have taken place when the victim girl was returning home from school in the evening hours. According to the learned counsel, no evidence has been placed before the court to prove the fact that the victim girl attended the school on that day. It is also pointed out that the Investigation Officer of the case-P.W.11 admitted in his cross examination that he did not examine the school authorities and also has not produced any certificate from the school concerned to show that the victim girl attended school on the fateful day. In such circumstances, taking into account the evidence of the father of the victim girl-P.W.2, that normally her daughter will come along with 10 to 15 school going children, doubt arises as to whether really the victim girl attended school on that day and why she was returning home alone without any other co-student, as stated by her father-P.W.2. That also cast doubt over the case advanced by the prosecution.

12. It is also pointed out by the learned counsel for the appellant/accused that it is only stated that accused abused the victim girl near Kangeyanur lake and the occurrence spot is not specifically stated either in the complaint or in the evidence of victim girl. It is also pointed out that the alleged occurrence is stated to have taken place in the public road where movement of people always existed. The learned counsel for the accused contended that it is highly improbable for the accused to abuse the victim girl at 5 pm., when lot of people were moving around and working near that place. In such circumstances, in the absence of any other independent witness to the occurrence and in view of the admission of P.W.2 that people were seen working near the occurrence spot, doubt arises as to whether really the alleged occurrence took place as claimed by the prosecution.

13. As stated earlier, the medical evidence does not establish the offence under Section 376 IPC as claimed by the prosecution. The contents of the complaint itself is not known to P.W.2 Venkatesh-complainant. In such circumstances, this court is of the view that prosecution has not placed enough material before the court, to substantiate the charge against the accused.

14. The learned counsel for the appellant/accused also contended that the finding of the trial court that the accused is guilty of the offence under Section 3(2)(v) of the SC/ST Act is also not sustainable since no material was produced by the prosecution to substantiate the charge. It is not in dispute that the victim belongs to Scheduled Caste community and the accused belongs to Most Backward Class community. To prove the offence under the above stated section, there must be material to show that the accused by words or deeds deliberately abused the victim in the presence of other persons in a public place by mentioning the community or committed the offence knowingly that the victim belongs to Scheduled caste community. In the case on hand, there is no evidence placed before the court to show that any other person was present at the alleged occurrence place. Likewise, there is no material before the court to show that the accused used any abusive language relating to the community of the victim girl. As already discussed, the alleged offence under Section 376 IPC is not established by the prosecution. Further even as per the evidence of P.W.2, the accused attended the puberty function of the victim girl few days prior to the alleged occurrence. There is no material placed before the court to show that any ill will existed between the accused and the victim family. In such circumstances, it is apparent that the prosecution has failed to prove the charge under Section 3 (2)(v) of the SC/ST Act against the accused and the finding of the trial court that the accused is guilty of the offence of the aforesaid section and the reason stated by it for arriving at such conclusion is not supported by materials and the finding of the trial court is not sustainable for the reasons stated above.

15. According to the learned counsel for the appellant/accused, the complainant and number of other people from the village were employed by the accused by giving advance amount to harvest sugarcane. In that connection, the learned counsel for the accused submits that dispute existed between P.W.2 and the accused since after taking advance amount, P.W.2 failed to turn up for work. Due to that dispute only, false complaint was lodged against the accused by P.W.2 is the claim of the defense counsel. P.W.2 admitted in his evidence that the accused used to take him for sugarcane harvest work by giving advance amount, but denied any dispute regarding any work. P.W.1 also admitted her father has taken advance amount from the accused to do sugarcane harvest work and number of persons from her village were working like that under the accused. Thus it is clear the accused as well as P.W.2-complainant were known to each other and the complainant was employed by the accused to do sugarcane harvesting. In such circumstances, the claim of the defense appears to be probable that some dispute in respect of employment existed between the accused and the complainant. Taking into consideration the above said facts and in the

absence of any independent witness to substantiate the prosecution claim about the occurrence and the absence of medical evidence to corroborate the prosecution claim and the fact that the complainant was unaware of the contents of Ex.P.1-complaint and the contradiction between the evidence of P.W.1 and P.W.2 about as to who has written the contents of the complaint and when it was laid with the police, doubt arises as to whether really, the accused was involved in the alleged occurrence and abused the victim girl as claimed by the prosecution. In such circumstances, benefit of doubt has to go to the accused for the reasons stated above. This court is of the view that the finding and conclusion arrived at by the trial court is not supported by material evidence and the said conclusion is not proper and is unsustainable and therefore, the same is liable to be set aside. The Point is answered accordingly.

16. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.140 of 2009 dated 23.06.2010 by Principal Sessions Judge, Villupuram, is 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(CS IV)

/true copy/

Sub Assistant Registrar

nvsri

To

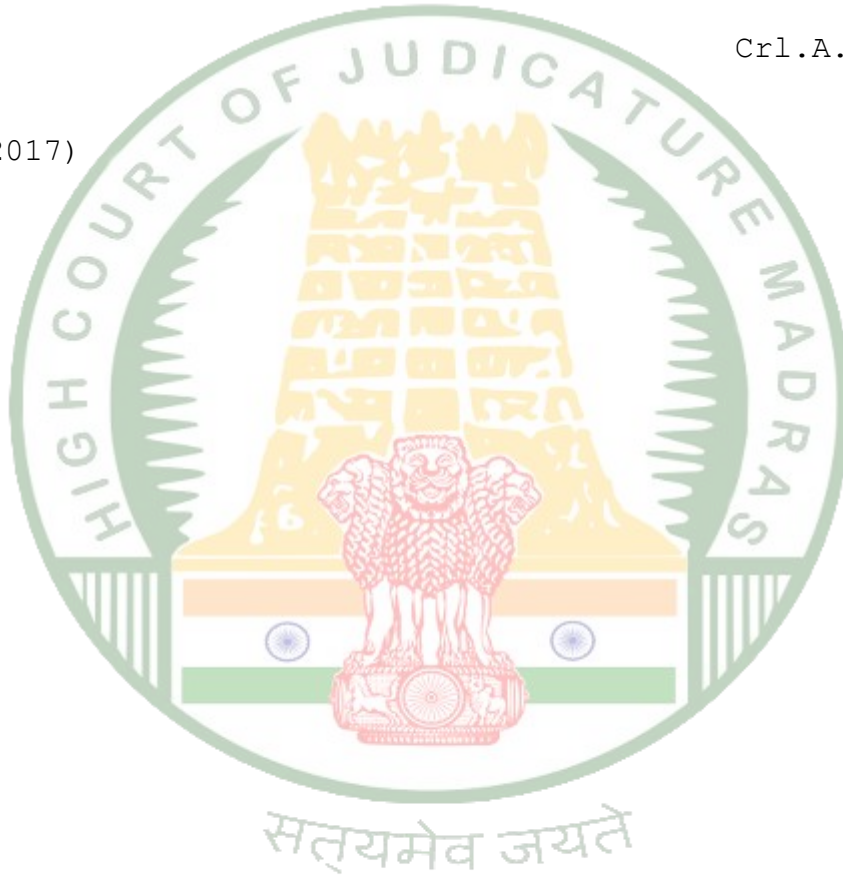
1. The Principal Sessions Judge,
Villupuram Sessions Division, Villupuram
2. The Chief Judicial Magistrate,
Villupuram.
3. The Judicial Magistrate No.I,
Villupuram
4. The Special Court,
(Principal Session Court)
Villupuram, Session Division,
Villupuram.

5. The Public Prosecutor Office,
High Court, Madras.
6. The Section Officer,
Vernacular Record Section,
High Court, Madras
7. The Deputy Superintendent of Police
Villupuram Sub Division,
Villupuram

+3cc to Mr.Rajasekaran, Advocate SR.No.5850(23/02/2017)

Cr1.A.412 of 2010

NRI (CO)
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