

Bail Slip

The Accused namely viz. Selvam @ Ganapathy S/O. Kaliyamurthy was directed to be released on Bail made in 1/13 in CrI.A.243/13 dated 27.03.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.01.2017	Delivered on : 20.01.2017
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CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Criminal Appeal No.243 of 2013

Selvam @ Ganapathy ... Appellant/Accused

vs.

State by

Inspector of Police

Vadalur Police Station,

Cuddalore District

(Crime No.267 of 2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment of the learned Sessions Judge, Magalir Neethimandram, Cuddalore in S.C.No.224 of 2012 dated 08th March 2013 convicting the appellant for offence U/s.376 r/w 511 IPC in which sentenced to undergo 3 years R.I. with fine Rs.500/- i/d to undergo further 6 months R.I. and convicted for offence U/s.506(ii) IPC sentenced to undergo 7 years R.I. with fine Rs.1000/- i/d to undergo further 2 years R.I. The Period of imprisonment already under goone to be deducted Under section 428 Cr.P.C.

For appellant : Mr.A.Arasu Ganesan

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

JUDGMENT

The appellant who is the sole accused in S.C.No.224 of 2012 on the file of Magalir Neethimandram, Cuddalore, faced trial for the offences under Section 376 r/w 511 and 506(ii) IPC. The trial Court by its judgment dated 08.03.2013 found guilty and convicted him to undergo imprisonment for a period of three

years and to pay a fine of Rs.500/- in default to undergo 6 months Rigorous Imprisonment for the offence under Section 376 r/w 511 IPC; and to undergo imprisonment for seven years and to pay a fine of Rs.1000/- in default to undergo two years Rigorous Imprisonment for the offence under Section 506(ii) IPC. Aggrieved over the said finding of the trial Court, the appellant / accused has come forward with this appeal, challenging the said conviction and sentence of the trial Court.

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

The accused is the son of the sister-in-law of the complainant/Rajeswari/PW1, who is residing at Aayeepettai village, Cuddalore District. It is alleged that on 06.04.2012 at about 2.00 p.m. when the parents of the victim girl/PW3/Kousalya were away attending to agricultural work, the accused took the victim girl/PW3/Kousalya to his house on deception and forceably had sexual intercourse with her. It is further alleged that the accused threatened her with dire consequence if she disclosed the same to anybody. Due to the said threat of the accused, the victim girl/PW3/Kousalya kept quiet. Subsequently, when her friend PW6/Divya questioned about her indifference. She was informed by the victim girl/PW3/Kousalya about the occurrence and in turn PW6/Divya informed it to the mother of the victim girl, one Rajeswari, who deposed as PW1. Thereafter PW1/Rajeswari enquired her daughter PW3/Kousalya and she admitted the occurrence to her mother. According to PW1/Rajeswari, after waiting for two days, they asked the accused about the occurrence and as there was no reply from him and as the victim girl/PW3/Kousalya felt stomach pain, PW3/Kousalya was taken to the hospital by her parents and thereafter PW1 lodged Ex.P1/Complaint with the police.

3. PW12 the then Special Sub Inspector of Police, Vadalur Police Station stated that on receiving the said complaint, he registered the case in Vadalur Police Station Crime No.267 of 2012 under Sections 342, 376 and 506(ii) IPC and forwarded the complaint to the Judicial Magistrate Court, Cuddalore. The said FIR marked as Ex.P9 has been received by the Court concerned on 09.04.2012 at 3.15 p.m.

4. The case was taken up for investigation by PW13, the then Inspector of Police, Incharge, Vadalur Police Station and he went to the occurrence spot on 08.04.2012 at 16.00 hours and prepared the Observation Mahazar/Ex.P10 and Rough Sketch/Ex.P11 in the presence of PW8/Kaliyamoorthy and PW9/Dharmalingam. PW13/Inspector of Police further examined the witnesses and recorded their statement. On the next day i.e. 09.04.2012 he sent the victim girl to the hospital for medical examination. Accordingly on 11.04.2012 at Cuddalore Government Hospital, PW4/Dr.Senthamil Selvi examined the victim girl. According to

her, the sexual organs of the victim girl were found developed and there were no external injuries found on her and there were no rupture in the hymen and it was found intact. According to her, on chemical examination, no sperm was found in the private parts of the victim girl. The Certificate issued by her is Ex.P3 and her opinion was that the hymen was intact and no symptom of sexual activity was found. Likewise the accused was also referred to Government Hospital, Cuddalore for medical assessment and as per PW5/Dr.Saravanan, he examined one Selvam @ Ganapathy aged about 24 years on 17.05.2012 and after the examination, he issued Ex.P4/Certificate and according to his opinion there is nothing to suggest that the said person is impotent.

5. Thereafter PW13/Inspector of Police recorded the statement of PW11/Gnanasekaran who was working as Village Administrative Officer, Vadakkuthu Village at that point of time. According to PW13/Inspector of Police, while he was in Vadalur Police Station, on 10.04.2012 at about 17.30 hours, the said PW11-Gnanasekaran along with his village assistant produced the accused and recorded the confession statement given by him. The said confession statement was produced as Ex.P12. Thereafter PW13/Inspector of Police secured the accused at about 16.30 hours on the same day and sent him for remand. He further stated that he examined the witness and recorded their statement. Subsequently, PW14/Sekar who assumed the office of the Inspector of Police, Vadalur Police Station on 11.04.2012 continued with the investigation and obtained Ex.P13 certificate regarding the age of the victim girl and as per the said report, the victim girl was stated to be aged between 10 and 12 years and on completion of investigation, filed the charge sheet on 05.06.2012 against the accused under Section 363, 506(ii) and 376 r/w 511 IPC.

6. Based on the oral and documentary materials (PW1 to PW14 and Ex.P1 to Ex.P13) produced by the prosecution, the trial Court framed charges against the accused as detailed in the judgment of the trial Court and on the basis of the available materials, the trial Court found the accused guilty of the offence alleged against him and sentenced him to undergo imprisonment and to pay fine as stated above. Aggrieved over the same, the appellant/accused has come before this Court with this appeal.

7. The learned counsel appearing for the appellant contended that the trial Court failed to appreciate the evidence properly and found the accused guilty without any acceptable evidence. It is admitted by the complainant/PW1 that the accused is the son of her Sister-in-law. In the case on hand, the victim girl/PW3/Kousalya, the Mahazar witnesses PW7 and PW8 have turned

hostile. Apart from the victim girl/PW3, there is no other eye witness to the occurrence. The complainant/PW1 who is the mother of the victim girl lodged Ex.P1/Complaint stating that on 06.04.2012 at about 2.00 p.m. when herself and her husband were away doing agricultural work, her daughter PW3/Kousalya was alone in the house and at that time, the accused herein took her daughter to his house and after tying her hands and putting cloth on her mouth, forceably had sexual intercourse with her. The complaint was lodged only on 08.04.2012 i.e. two days after the alleged date of occurrence. However, PW4/Dr.Senthamil Selvi who examined the victim girl on 11.04.2012 stated that the victim girl informed her that the accused tried to outrage her modesty on 02.04.2012 in PW8/Kaliamoorthy's house at about 4.00 p.m. However, PW1/Rajeswari, the complainant stated in her oral evidence that the occurrence took place on the 6th day of the 4th month in the last year at the residence of the accused, as stated in the complaint. Thus doubt arises as to on which date and place the alleged occurrence took place.

8. It is alleged in Ex.P1/Complaint, that the accused took the victim girl to his house and committed the offence. However, PW4/Dr.Senthamil Selvi stated in her evidence that the victim girl told her that the occurrence took place in the house of PW8/Kaliamoorthy. In Ex.P3/Medical Certificate also, the same is stated. The PW13/Inspector of Police stated that he enquired about the occurrence from 08.04.2012 to 10.04.2012 only. He also stated that on enquiry he was told that on 06.04.2012 PW1/Complainant and her husband were away at work spot and at that time, the accused forceably took the victim girl to his house and committed the offence. Thus, as per PW1/Complainant, the occurrence took place on 06.04.2012 at the residence of the accused and the complaint was lodged on 08.04.2012 which is totally contrary to PW4/Dr.Senthamil Selvi evidence and the Ex.P3/Certificate issued by her. Further, PW1/Complainant stated in her evidence that he was informed by PW6/Divya about the occurrence two days after the alleged occurrence and immediately enquired her daughter and thereafter questioned the accused two days later and as there was no reply for the next two days she lodged the complaint/Ex.P1.

9. The learned counsel appearing for the accused/appellant contended if the occurrence has taken place on 06.04.2012 as mentioned in Ex.P1/Complaint, the above said submission of PW1 regarding the time taken for lodging the complaint will falsify the averments of the complaint. It is also pointed out that PW1 the complainant stated in her evidence that the complaint was written by the police when she went to the police station. However, PW12/Special Sub Inspector of Police denied the same in his evidence. In such circumstances, doubt arises as to really

who wrote the contents of Ex.P1/Complaint. The other witness PW6/Divya, stated that on the alleged date of occurrence when herself and PW3/Kousalya were going to petti shop, the accused gave Rs.5 and asked PW3 to purchase beedi and when the victim girl/PW3 went to hand over the beedi to the accused inside his house, she went away and therefore she did not know as to what happened to PW3. Further, PW6/Divya stated that when she saw the victim girl next day, she was weeping and when enquired, she stated that the accused has molested with her. According to PW6/Divya, she subsequently informed PW1/Rajeswari, the mother of the victim girl about the occurrence. However, PW6 in her cross examination stated that she met the victim girl on the occurrence day evening itself but the victim girl did not tell her anything about the occurrence at that time. Subsequently, PW6/Divya stated that she met PW3 and PW1 two days after the alleged date of occurrence. In such circumstance, doubt arises as to when really PW6 met the victim girl, after the alleged occurrence and whether her evidence is believable one.

10. It is also admitted by PW6/Divya that there are number of houses adjacent to the accused house. PW1 also admitted that her house as well as the accused house are situated in the South Street and there are 160 house in that area. She also admitted that people will be moving around always in the said street. In such circumstances, the prosecution has not produced any independent evidence to support the theory of the victim girl and PW6 going together to the petti shop and thereafter the victim girl going inside the house of the accused as stated earlier. Further, the place of occurrence itself is in doubt as stated above. PW4/Dr.Senthamil Selvi has been informed by the victim girl that the occurrence took place in the house of PW8/Kaliamoorthy which is contrary to the averment in Ex.P1/Complainant. In such circumstance, the contention of the appellant that the prosecution has not established the alleged occurrence as well as the place of occurrence, appears to be just and acceptable.

11. Further the victim girl has himself turned hostile and stated in her chief-examination that while returning home from petti shop, the accused pulled her by catching hold of her hand but herself and PW6/Divya ran away to their home. In such circumstance, as the evidence of the victim girl itself is not supporting the case of the prosecution, doubt arises as to whether the occurrence as alleged by the prosecution took place or not. Even though PW3 during her cross examination by the prosecution admitted to the contents of her statement given to the police, there is no medical evidence to substantiate the case of the prosecution. PW4/Dr.Senthamil Selvi who examined the victim girl has categorically stated that there were no

injury found on the private part of the victim girl and her hymen was intact. PW4 also stated that the victim girl did not tell anything about having pain or injury in her body. In such circumstance, the claim of the prosecution that the accused tied both the hands of the victim girl and closed her mouth with piece of cloth before committing rape on her is unbelievable, in view of no injury being found on the victim girl's body. It is also surprising that the victim girl kept quiet for two days without informing about the occurrence to her friend or parents which creates doubt about the bona fide of Ex.P1 Complaint.

12. Further PW1 stated that herself and her husband took the victim girl to the Doctor on their own for medical examination. According to PW10/Dr.Sivaprakasam while he was working in Kurinjipadi Government Hospital on 08.04.2012 the victim girl was brought by her father at 3.15 p.m. alleging that she was physically assaulted on 02.04.2012 at 4.00 p.m. in the residence of one Kaliyamoorthy. PW10/Dr.Sivaprakasam also stated that as per the report of Gynecologist in Government Hospital dated 11.04.2012 hymen of the victim girl was found intact and there was no evidence of sexual intercourse as claimed by the victim girl. The report given by him is produced as Ex.P7. Thus, the evidence of PW10 also creates doubt as to whether the occurrence took place really on 06.04.2012 as alleged in the complaint/Ex.P1.

13. Thus, the evidence let in by the prosecution is not clear cut about the date of occurrence as well as the place of occurrence. Further, it is contended by the prosecution that the accused gave Confession Statement to the Village Administrative Officer, Vadakuthu Village who deposed as PW11 and the admitted portion of the said confession statement is produced as Ex.P12 which will prove the guilt of the accused. However, the said Village Administrative Officer who deposed as PW11 turned hostile and denied recording any such confession statement given by the accused. He stated in his evidence on intimation from police at about 4.00 p.m. on 10.04.2012 he went to Vadalur Police Station and there the accused was seen by him. PW11 also stated that he informed the police that the village to which the accused belongs is not within this limits. But the Inspector of Police told him that the concerned Village Administrative Officer is not traceable and asked to sign in a paper after writing down in it the contents given by the police. PW11/Gnanasekaran admitted his signature and seal in the alleged confession statement of the accused and the same is marked as Ex.P8, but denied recording the confession statement of the accused on 10.04.2012 at his office as claimed by the prosecution. PW11/Gnanasekaran, VAO stated that the native place of the accused is within the limits of the VAO, Keelur

Village and he is not incharge of that area. PW11 also stated that his place is about 20 km from the village of the accused. In such circumstance, the claim of the prosecution, that the accused gave confession statement and admitted his crime to PW11/Gnanasekaran, VAO is not proved and the same cannot be relied upon to prove the guilt of the accused.

14. Thus, it is evident from the above said discussion that the prosecution has failed to establish the allegations against the accused with proper and acceptable evidence. In such circumstance, the findings of the trial Court that the accused is guilty of the charges arrayed against him is not sustainable and the reasons stated by the trial Court for arriving at the said conclusion is unacceptable. For the reasons stated above, the plea of the appellant/accused has to be entertained and the conviction and sentence imposed by the trial Court is liable to be set aside. The point is answered accordingly.

15. In the result, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.224 of 2012 passed by the learned Sessions Judge, Magalir Neethimandram, Cuddalore 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

//True Copy//

Sub Assistant Registrar

NR (CO)
RS (09/02/2017)

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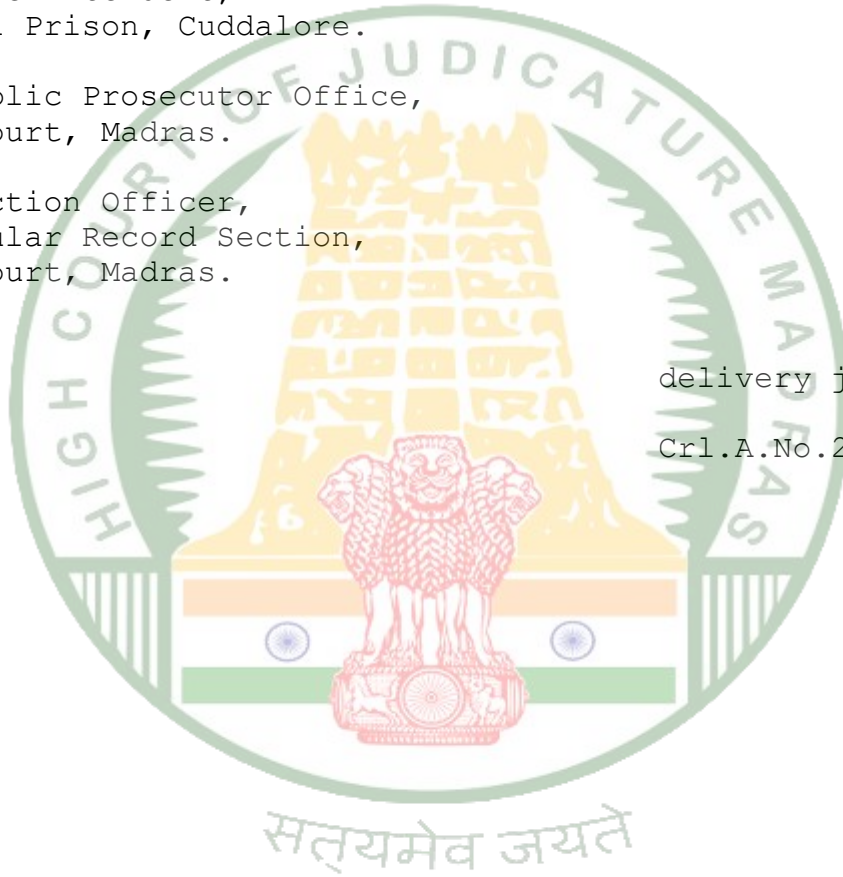
To

1. The Sessions Judge,
Magalir Neethimandram,
Cuddalore.

-do- thro The prl. Sessions Judge,
Cuddalore.

2. The Inspector of Police
Vadalur Police Station,
Cuddalore District
3. The Judicial Magistrate No.3
Cuddalore
4. -do- the Chief Judicial Magistrate,
Cuddalore
5. The Superintendent,
Central Prison, Cuddalore.
6. The Public Prosecutor Office,
High Court, Madras.
7. The Section Officer,
Vernacular Record Section,
High Court, Madras.

delivery judgment in
Crl.A.No.243 of 2013



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