

Bail Slip

The Appellant/Accused (in S.C.No.191/96 dated 01/12/2004 on the file of the Assistant Sessions Judge, Chidambaram) was encoraged on bail and in by the order dated 10/08/2018 made in Crl.Mp.10663 of 2018 in Crl.A.614 of 2005 filed against the S.C.NO.191 of 1996 on the file of the Assistant Sessions Judge, Chidambaram.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.10.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

CRL. A. NO. 614 OF 2005

Arumugham

.. Appellant/Accused

- Vs -

State, rep. by
Inspector of Police
Sethiathope Police Station
Chidambaram.

.. Respondent/Complainant

Criminal Appeal filed u/s 374 (2) Cr.P.C. to set aside the impugned judgment passed by the learned Assistant Sessions Judge, Chidambaram, in S.C. No.191/96 dated 1.12.2004.

For Appellant : Mr. R.Sankarasubbu, for
Mr.Seeni Sultan

For Respondent : Ms. T.P.Savitha, GA (Crl. Side)

JUDGMENT

The appellant herein, who is the accused in S.C. No.191/96, was put on trial for the offences u/s 323, 354 and 376 IPC before the learned Assistant Sessions Judge, Chidambaram and on being found guilty, the appellant was convicted and sentenced to rigorous imprisonment for a period of 10 years u/s 376 IPC and further directed to pay a fine of Rs.10,000/=, in default to undergo rigorous imprisonment for a period of one year. Of the fine amount of Rs.10,000/-, an amount of Rs.7,500/- was directed to be paid as compensation to the complainant/P.W.1. Being aggrieved by the said judgment, the present appeal has been preferred by the appellant.

2. It is the case of the prosecution that at about 2.00 p.m. on 16.3.95, the accused sexually abused P.W.1 in the fields belonging to one Krishnamurthy at Valiyamadevi and in the course of the said transaction P.W.1 suffered injuries over the ankle, jaw and right shoulder.

3. P.W.1 is a resident of Keela Valiyamadevi village. On 16.3.95, at about 2.00 p.m., after cutting grass in the fields and tying the same, P.W.1 requested the help of the accused, who was passing by the said place, to lift the grass bundle and keep it on her head. The accused helped her, whereupon she proceeded and the accused followed her. After sometime, seeing the accused following her, P.W.1 questioned him. At that time, the accused pushed the grass bundle from the head of P.W.1 and in spite of her cries, exploited her sexually near the fields of one Krishnamurthy. After committing the said act, the accused left the place leaving P.W.1, who, after sometime regained consciousness. On reaching her house, P.W.1 informed the incident to her husband, P.W.2 at which time, due to her cries, the neighbours gathered. After P.W.1 narrated the incident to P.W.2 thereafter, P.W.1 along with P.W.3 and others, went to Sethiathope Police Station and gave the complaint Ex.P-1 to P.W.9, the Head Constable attached to Sethiathope Police Station.

4. P.W.9, on receipt of the complaint, Ex.P-1, registered the crime under Section 376 IPC and prepared the FIR. P.W.9 seized the saree, inskirt and torn blouse produced by P.W.1 under Form 95. The FIR was forwarded to P.W.11 for taking up investigation.

5. P.W.11, on receipt of the printed FIR, commenced investigation. He proceeded to the scene of occurrence and prepared observation mahazar, Ex.P-14 and drew rough sketch, Ex.P-15, in the presence of P.W.s 5 and 10. P.W.11 seized the broken pieces of bangles and a yellow mangalsutra thread from the scene of occurrence under the cover of mahazar. P.W.11, thereafter, questioned P.W.1, P.W.3, P.W.4 and others and recorded their statements. At about 4.00 a.m., on the early morning hours of 17.3.95, P.W.11 arrested the accused near Sethiathope Cross Road. At that time, the accused came forward and gave a voluntary confession statement in the presence of witnesses, which was reduced into writing. The lungi and underwear worn by the accused were seized under the cover of mahazar. Thereafter, the accused was brought to the police station and, thereafter, along with a requisition sent to the Court to subject the accused for medical medical examination relating to his potency. P.W.11 sent the materials seized in the course of investigation to the Court. P.W.11 also gave a requisition to the Court to send the clothes worn by the accused and P.W.1 for chemical examination. P.W.11 examined the doctors, who examined P.W.1 and the accused and recorded their

statements. After completing the investigation, P.W.11 filed the final report against the accused charging him for the offences under Sections 323, 354 and 376 IPC.

6. The prosecution, in order to sustain their case, examined P.W.s 1 to 13 and marked Exs.P-1 to P-17. The accused was, thereafter, questioned under Section 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution witnesses and he denied it as false. Neither any witness was examined nor any documents were marked on the side of the accused.

7. The trial court, on a consideration of oral and documentary evidence and other materials, found the appellant guilty of the offence u/s 376 IPC and sentenced him as above. Aggrieved by the above conviction and sentence, the present appeal has been preferred by the appellant.

8. Learned counsel appearing for the appellant submitted that the prosecution has not made out a case that the accused has committed the act of sexual intercourse on P.W.1. Learned counsel for the appellant submitted that in the absence of any medical evidence to support the theory that the accused committed the act of sexual intercourse, the conviction and sentence u/s 376 IPC cannot be sustained. In the alternative, it is the submission of the learned counsel for the appellant that at best, the evidence would only show that the accused has used force on P.W.1 with an intent to outrage her modesty and, therefore, the conviction u/s 376 IPC has to be modified to one under Section 354 IPC.

9. Per contra, learned Government Advocate (Crl. Side) submitted that the prosecution has proved that the act of sexual abuse has been committed on P.W.1. It is the submission of the prosecution that the evidence of the doctor conclusively establishes that P.W.1 has been subjected to sexual abuse and in the absence of the accused adducing any evidence, the contention of the prosecution has to be sustained in view of the irrefutable evidence on record. Therefore, it is submitted that no interference is called for with the conviction and sentence awarded by the Trial Court.

10. This Court gave its anxious considerations to the submissions advanced on either side and also perused the materials available on record.

11. It is the contention of the prosecution that the conviction and sentence for the offence u/s 376 IPC must be maintained despite the non-examination of independent witnesses and despite non-availability of injuries over the private part of the victim. On the other hand, learned counsel for the

accused submits that if really a married woman having children had resisted the attempt of sexual abuse, definitely there must be injuries over the private part and in the absence of the same the logical conclusion is that there would not have been sexual abuse and at the most what had been done by the accused would attract the offence u/s 354 IPC or at any rate the offence u/s 376 r/w 511 IPC and certainly and not the offence u/s 376 IPC.

12. These contentions have to be answered in the light of the evidence of the victim, the medical evidence and other attendant circumstances available in this case. It is in evidence that immediately after the occurrence, P.W.1, who is a married lady has chosen to inform her husband regarding the alleged sexual abuse. This occurrence had taken place about 25 years back. At that point of time, it would not have been easy for a lady to inform about the sexual abuse to her husband where it is likely to be misunderstood by her husband. Irrespective of this inconvenience, if P.W.1 had informed her husband regarding this incident, then certainly there must be an element of truth in the statement of P.W.1.

13. Learned counsel for the accused vehemently contended that there is no complete description of the incident which would amount to sexual abuse and what is stated by P.W.1 would not amount to offence u/s 376 IPC. This contention has been very beautifully dealt with by the lower court in the social context in which P.W.1, who had been placed and having regard to the natural way of her describing the incident. Therefore, this contention also is not sustainable.

14. The evidence of the doctor, who examined P.W.1 assumes significance. P.W.6, who was the doctor, who examined P.W.1 has deposed that P.W.1 had suffered three injuries, one on the wrist, one on the back and one on the right jaw. P.W.6 has further stated that while the injury on the back of P.W.1 is a contusion, the one on the right jaw is a laceration. P.W.6 has further deposed in her evidence that P.W.1 was suffering her periods when she was brought before her for examination. P.W.6, though has deposed that she did not find any injury on the private parts, however, had further deposed that the private parts of P.W.1 had suffered damage. P.W.6 has further deposed that the injuries on P.W.1 could have been caused due to the said sexual assault on P.W.1. If due to natural causes/causes beyond the control of P.W.1 if evidence erased itself or immersed itself, that does not mean that there was no evidence.

15. P.W.7 is the doctor, who had examined the accused for determining his potency. P.W.7 had deposed that lacerated injuries were found on the chest, right hand and lips of the appellant. P.W.7 had further deposed that the above injuries could have been caused if the victim had resisted sexual assault

committed on her by the accused. P.W.7 had further deposed that the accused objected to taking semen from him. The correlation of the injuries suffered by the accused as well as the injuries suffered by the victim would together speak louder than the voice of many witnesses.

16. Ex.P-16 is the chemical examination report of the clothes worn by P.W.1 and the accused. The saree, inskirt and blouse worn by P.W.1 and the lungi and underwear worn by the accused were subjected to chemical examination. The report reveals that while blood was found on the inskirt and blouse worn by P.W.1 as also the underwear worn by the accused, however, no blood was traceable on the saree of P.W.1 and the lungi of the accused. Further Ex.P-17, the forensic examination report reveals that no semen was found on the skirt, blouse and underwear. However, the report further reveals that the blood on the blouse and underwear were disintegrated.

17. No reason has been attributed by the accused to explain how blood was found on his underwear. The silence of the accused to explain the presence of blood in his underwear only goes to show that the attempt made by the accused to molest P.W.1 had left stains of blood carried from P.W.1 on to the underwear of the accused. Therefore, there is a distinct possibility of the accused to have committed sexual abuse on P.W.1.

18. In the light of the above evidence, it is the submission of the learned counsel for the accused that time, being the best teacher, has taught the accused the ups and downs of life and has moulded the accused into a law abiding citizen. It is further submitted that the accused has repented for his act and has reformed himself and, therefore, this Court may consider imposing a lesser punishment on the accused and that is also for the attempt and not for the actual sexual abuse.

19. It is evident from the records that the incident had taken place in the year 1995. Almost 23 years have passed since the occurrence, at which point the accused, who was 22 years of age, would now be around 47 years of age. The Damocles Sword that had hung on the head of the accused in the form of further incarceration would have kept the accused on the path of reformation, as submitted by the learned counsel for the appellant. There is all probability for the accused to have reformed himself. With almost two decades passing by, the accused, by now would be having his own family to take care of and this would have made him a more responsible person. Considering all the above, this Court is of the considered view that the above special circumstances are adequate enough for this Court to grant the benefit of a lesser sentence to the accused in view of the proviso to Section 376 IPC as it stood

prior to amendment w.e.f. 3.2.2013.

20. Therefore, this Court, while confirming the conviction recorded by the Trial Court u/s 376 IPC, however deems it fit that reduction in sentence would be the balancing act in the present case. It is submitted by the learned counsel appearing for the appellant that the appellant has already undergone incarceration for a period of around 5 ½ years. This Court, in the above circumstances, is of the view that ends of justice would be met if the sentence imposed on the accused is limited to the period already undergone.

21. For the reasons aforesaid, this appeal is disposed of confirming the conviction, but modifying the sentence to the period already undergone. It is reported that the appellant is on bail. If the petitioner happened to be in custody, he is directed to be released forthwith unless his presence/custody is required in connection with any other case. Bail bonds, executed, shall stand cancelled.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate NO.I,
Chidambaram.

2.The Judicial Magistrate,
Sethiyathope, Cuddalore District.

3.Do Thro The Chief Judicial Magistrate,
Cuddaore.

4. The Assistant Sessions Judge
Chidambaram.

5.Do thro The Principal Sessions Judge, Cuddalore.

6.The Inspector of Police,
Senthithope Police Station,
Chidambaram.

7.The Superintendent,
Central Prison,
Cuddalore.

8. The Public Prosecutor
High Court, Madras.

9.The Section Officer,
Criminal Section,
High Court, Madras.

CRL. A. NO. 614 OF 2005

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nr 17/12/2018



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