

Bail Slip

That the Appellant/Accused no.1 namely V.Venkatesan S/O Veerabadran was released on bail as order of this Court dated: 30/06/2014 in MP.1/13 in CRL.A.No.696/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2018
DELIVERED ON : 20.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.696 of 2013

V.Venkatesan ... Appellant/Accused
No.1

 V_S

The State Rep. by
The Inspector of Police,
All Women Police Station,
Arni, Tiruvannamalai District.

.. Respondent/Complainant

(Crime No.09 of 2007)

Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the S.C.No.95 of 2009 on the file of learned Assistant Sessions Judge at Arni, Tiruvannamalai District and set aside the judgment of conviction and sentences passed on the appellant/accused No.1 herein imposed on him on 23.08.2013 by allowing the appeal filed by him by this Court.

For Appellant : Mr.E.Kannadasan
for M/s.A.Bharathi W.Camyless Gandhi

For Respondent : Mrs.T.P.Savitha
Government Advocate (Cr1.Side)

JUDGMENT

The instant Criminal Appeal is preferred by the appellant who is the 1st Accused in a Session Case in S.C.No.95 of 2009 on the file of the learned Assistant Session Judge, Arani, Thiruvannamalai was convicted by Judgment dated 23.08.2013 for

the offence under sections 450, 376 and 506(i) of IPC. The learned trial Court convicted the Appellant/Accused for a period of 7 years Imprisonment for the offence under section 450 of IPC along with a fine of Rs.5000/- in default 3 months simple imprisonment was imposed. As far as the offence under section 376 of IPC, the Appellant/Accused was imposed a sentence of 10 years of imprisonment and also imposed fine of Rs.5,000/- in default, he was ordered to undergo 3 months of Simple Imprisonment and for the offence under section 506(i) of IPC., the Appellant/Accused was convicted and was sentenced to undergo 2 years Imprisonment and also imposed fine of Rs.2,000/-, in default he was ordered to undergo one month of imprisonment.

2. Feeling aggrieved over the sentence passed by the learned trial Court, the appellant has preferred the instant appeal. It is seen from the records that PW-1 was subjected for sexual violence by the appellant on 13.10.2007 at her residence. The occurrence had taken place at the house of the victim that too in front of the younger sisters of the victim by subjected them under threat. Immediately on the very next day morning, since the occurrence had taken place at about 11.30 p.m. on 13.10.2007, the barbaric act of the accused was informed to a neighbour namely Madurambal, who also faced the trial, but was acquitted. However, the further case of the prosecution was that as the said Madurambal also intimidated the victim girl not to disclose the offence committed by the Appellant/Accused as it was a slur and stigma on the character of the victim girl. Thereafter the victim girl informed the matter to her parents on 14.10.2007 and in turn, they rushed to Kalamboor Village and on 18.10.2007 the complaint Exhibit P-1 was lodged before the Inspector of Police, All Women Police Station, Arni and on the next day the case came to be registered in Crime No.9 of 2007 on the file of All Women Police Station, Arni, Thiruvannamalai District. At the conclusion of the investigation, PW-12 filed final report before the learned Judicial Magistrate who in turn assigned P.R.C.No.9 of 2009. Upon the documents relied on by the prosecution, were furnished to the accused under section 207 of Cr.P.C. and thereafter the case was committed to the file of the learned Principal District and Session Judge, Thiruvannamalai District who inturn made over the case to the file of the learned Trial Court.

3. The perusal of the records would further show that PW-1 is the victim girl; PW-2 and PW-3 are parents of PW-1. PW-4 is the grandfather of Victim girl and PW-5 and PW-6 are younger sisters of the PW-1. PW-7 is the witness in whose presence, the Exhibit P-3 Observation Magazar was prepared. PW-8 is the doctor who examined the Appellant/Accused in order to ascertain the fact that the Appellant/Accused is not an impotent. PW-9 and 10 are hearsay witnesses, they are relatives of PW-1, both of them

accompanied PW-1 to lodge police complaint. PW-11 is the doctor who examined the PW-1 and PW-12 is the Investigation Officer. In the instant case on the side of the Appellant/Accused, DW-1 was examined who is the Assistant Doctor at Arni Government Hospital. Through him Exhibit R-1, a wound certificate of the appellant/accused was marked and on either side no material object is produced.

4. According to the learned counsel for the appellant that though in the instant case, 12 witnesses have been examined on the side of the prosecution, no charges are proved as against the Appellant/Accused. Further, the evidence of PW-1, PW-5, and PW-6 appeared to be contradictory and unbelievable. In lodging the complaint there was a delay of nearly 6 days which is material in this case as no reasonable explanation is given for the belated lodging of the complaint. The learned counsel for the appellant was also brought to the notice of this Court that the evidence of PW-12, the Investigation Officer would make the prosecution case as false for the reason that though the Appellant/Accused was arrested on 19.10.2007, he was subjected for medical examination only on 23.09.2008. Ironically though the nighty worn by PW-1 was recovered on 19.10.2007, the same was produced before the concerned Court on 11.03.2008. In addition to that though complaint was lodged on 18.10.2007 PW-1 was referred for medical examination only on 31.10.2007. All these infirmities would go to show that the case of the prosecution is absolutely false one.

5. The learned counsel for the appellant would further submit that even in lodging the complaint all the witnesses have deposed different version which would make serious doubt over the prosecution case, therefore it is the contents of the learned counsel for the Appellant/Accused that the grounds raised in the appeal memorandum are fit for consideration.

6. Per contra, the learned Government Advocate (Criminal Side) has contended that this offence is against women and also is against the society. Moreover, the prosecution has let in cogent evidence to prove the case, the evidence in total is totally pointing the Appellant/Accused as he alone has committed the offence and accordingly was found guilty. As far as the offence under section 376 of IPC is concerned that minor contradictions shall not affect the prosecution case in any manner since it involves the life of a woman. He also pointed out that the suggestions put forth upon PW-1 on the side of the Appellant/Accused are legally feeble which deserves no consideration. There is no need for the prosecution witnesses

concerned to depose against the Appellant/Accused.

7. Therefore, the request of the learned Government Advocate (Criminal Side) is that the well considered judgment of the learned Trial Court needs no interference by this Court and prays for the dismissal of the Criminal Appeal.

8. I heard Mr. E. Kannadasan for M/s. A. Bharathi W. Camyles Gandhi, learned counsel for the appellant and Mrs. T. P. Savitha, learned Government Advocate (Criminal Side) and all the materials available on record are perused.

9. It is an offence committed against a young woman by a known middle aged person. According to the evidence of PW-1, she was subjected for sexual assault at her residence on 13.10.2007 at about 11.30 p.m. The accused was bold enough to trespass into the residence of PW1, who was sleeping inside her house along with two of her tender aged younger sisters who are PW-5 and PW-6. According to the evidence of PW-1 on the fateful day by breaking open the door and causing damage to the latchet, the accused trespassed into the residence of PW1 and committed the offence. When they attempted to shout all of them were intimidated by the accused. Thereafter on the next day morning PW-1 informed the illegal act of the 1st accused to the 2nd accused. However, she was persuaded by Accused No.2 as if it would be a slur on the modesty of the PW-1. Thereafter, the matter was informed to the PW-2 to PW-4 in turn all of them came down to Kalamboor Village that is to the residence of PW-1 and after 5 days Exhibit P-1 was lodged with PW-12 the Inspector of Police, All women Police Station, Arni, Thiruvannamalai District.

10. The evidence adduced in the chief examination of PW-1 is almost corroborated by the evidence of PW-5 and PW-6. However, it is unfortunate to record here that when the cross examination of PW-1 is taken up for analysis, it has created a doubt over the prosecution case. It is a gruesome offence, ironically, PW-1 instead of informing the occurrence to her parents informed the same to Accused No.2 which is unusual. Though it was informed to Accused No.2 by 6 a.m., PW-1 informed the same to her parents only by 8 a.m., and PW-2 and PW-3 came to rescue PW-1 only on the next day. No complaint was lodged to the nearby Kalamboor Police Station. She has categorically stated that the complaint was written by one Appu who has not been examined as witness.

11.At the same time when the evidence of PW-12 is perused, she has deposed that though she arrested the Appellant/Accused on 19.10.2007 only after lapse of nearly 11 months that is on 23.09.2008, she subjected the accused for medical examination which is nothing but an absurdity on the part of the Investigation Officer. Apart from that though the complaint was lodged by PW-1 on 19.10.2007, she was subjected for medical examination only on 31.10.2007 which is also a faulty investigation by PW-12.

12.Now once again this Court subjected the evidence of PW-1 for scrutiny. While cross examining PW-1, a suggestion was put forth about the alleged affairs of PW-1 with another boy and the refusal of the accused to construct a house at the vacant place belongs to the Appellant/Accused were the cause of the lodging false complaint. At the same time PW-2 has admitted that even on 14.10.2007 a complaint was lodged with Kalamboor police station but in this connection no investigation was conducted. Further, PW-1 when she was subjected for medical examination with PW-11, she informed the doctor that she was subjected for the commission of sexual offence by an unknown person.

13.At the same time the contention of the learned Government Advocate (Criminal Side) that there is no strong circumstance is available to discard the evidence of PW-1 which is corroborated by the evidence of PW-5 and PW-6. It is seen from the records that unfortunately the investigation conducted by PW-12 is the root cause to collapse the case of the prosecution. The investigation Officer, without taking due care, conducted investigation in a very casual manner. Though it is stated that on 11.03.2008 she entrusted the nighty worn by PW-1 but the same has not been marked as material object. Moreover, PW-12 does not aware as to how an investigation is to be conducted as far as the offence punishable under section 376 of IPC or the offence against the women.

14.Apart from that the conduct of PW-1 soon after the occurrence is having relevance for the just decision of the case. Though she is able to depose that the accused is the known person to her, but she informed the doctor PW-11 that the offence committed against her is an unknown person. Apart from that no reason is given as to why complaint was belatedly lodged. On the other hand, the evidence of RW-1 that on 14.10.2007 the Appellant/Accused was assaulted by known person and to substantiate the same Exhibit R-1 was also marked. Since, it is the evidence given by a Government Doctor, the same ought to have been investigated.

15. Therefore, from the above discussion the faulty investigation and the conduct of PW-1 soon after the occurrence have not inspired confidence in the case of the prosecution. Therefore, this Court is constrained to allow the appeal.

16. In the result:

(a) this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.95 of 2009, dated 23.08.2013, on the file of the learned Assistant Sessions Judge, Arni, Tiruvannamalai District, is set aside;

(b) the appellant/accused is discharged from all charges;

(c) if any fine amount is paid by the appellant/accused, the same shall be refunded.

17. Before parting with the case, I directed the Registry to mark the copy of the judgment and connected records to the Director General of Police, Tamilnadu to peruse this case and judgment by the trial Court and this Court and to arrange training classes to all the Investigation Officer throughout the State to sensitize them the manner by which how the investigation is to be conducted as for as the case of sexual offence and the offence against woman as per law.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Sessions Judge,
Arni, Tiruvannamalai District.

2. The Judicial Magistrate,
Arni, Tiruvannamalai District

3.-do- Throu The Chief Judicial Magistrate,
Tiruvannamalai, District

4. The Inspector Of Police,
All Women Police, Station,
Arni, Tiruvannamalai District

5.The Public Prosecutor,
High Court, Madras

Copy to
The director General of Police,
Mylapore, Chennai-4

+1cc to the The Public Prosecutor, S.R.No.79091

Criminal Appeal No.696 of 2013

GSP(20/11/2018)

Pre-delivery order made in

20.11.2018