

Bail Slip

The Revision Petitioner/Appellant/Accused(Sole Accused in CC.No.5/2012 dated 31/12/2015 on the file of the Judicial Magistrate II, Poonamallee) was released on Bail as per order dated 29/06/2017 made in CrI.Mp.8051 & 8052/17 in CrI.Rc.No.861/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CrI. R.C.No.861 of 2017

Bala Sundaram ... Petitioner

Vs

State, rep. by
The Inspector of Police
Avadi Police Station
Chennai.
(Cr.No.380 of 2011) Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to set aside the conviction and sentence passed by the learned Judicial Magistrate II, Poonamallee in C.C.No.5 of 2012, dated 31.12.2015, which was modified by the learned District and Sessions Judge, Tiruvallur, in C.A.No.9 of 2016 by judgment dated 10.4.2017.

For Petitioner : Ms.T.Ramadevi

For Respondent : Mr.R.Suriyaprakash
Government Advocate
(Criminal Side)

ORDER

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. to set aside the conviction and sentence passed by the learned Judicial Magistrate II, Poonamallee in C.C.No.5 of 2012, dated 31.12.2015, which was modified by the learned

District and Sessions Judge, Tiruvallur, in C.A.No.9 of 2016 by judgment dated 10.4.2017.

2. The facts in a nutshell are as under: The case of the prosecution is that one Arumugam (P.W.1), who is father of the victim, had complained that, on 9.3.2011 at about 6.30 P.M., when his daughter aged about 17 years, studying 12th standard, and his son were present in the house, the accused, who is pastor of A.G.Church, came to his house and picked his daughter's hand, pulled her and hugged her. On hearing her scream, her brother, son of the complainant, came there and on seeing him, the petitioner left the house of the complainant.

3. It is further stated that on return of the complainant to his house, the victim narrated the facts, but due to 12th examinations, he did not lodge complaint immediately. The complainant on learning about similar conduct of the petitioner two years back, on 11.6.2011, lodged a complaint before the respondent police station and a case was registered in Crime No.380 of 2011 for the offence under Section 354 of the Indian Penal Code read with Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act as against the petitioner and after investigation, the respondent police filed final report under Section 354 of the Indian Penal Code read with Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act before the learned Judicial Magistrate II, Thiruvallur as against the petitioner.

4. The learned trial Court after examining seven witnesses found the accused guilty of offence under Section 354 of Indian Penal Code and sentenced him to undergo one year rigorous imprisonment and also imposed fine of Rs.1,000/-. However, the petitioner was acquitted of the offence under Section 4 of the Tamil Nadu Prohibition of Woman Harassment Act.

5. On appeal, the learned Principal District and Sessions Judge, Tiruvallur, by judgment dated 10.4.2017, modified the sentence to six months rigorous imprisonment.

6. Assailing the said judgment, the present revision is filed by the petitioner.

7. The learned counsel appearing on behalf of the petitioner contended that the petitioner is a Pastor of Christian Church and the family members of the complainant regularly attend the prayer in the church and there was a dispute between the complainant and the accused regarding the construction of building in the church and certain money transactions and, therefore, in order to tarnish his image, the complaint had been lodged and hence, the orders passed by the Courts below should be set aside.

8. Per contra, the learned Government Advocate (Criminal Side) reiterated the reasons that weighed with the Courts below in convicting the petitioner and prayed for dismissal of this revision.

9. I heard Ms.T.Ramadevi, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and perused the documents available on record.

10. It is not in dispute that the petitioner accused in a Pastor of Church and the family members of the complainant visit the church for their prayers. The allegation levelled against the petitioner accused in that on 9.3.2011 at about 6.30 P.M., when his daughter aged about 17 years, studying 12th standard, and his son were present in the house, the accused, who is pastor of A.G.Church, came to his house and picked his daughter's hand, pulled her and hugged her and on hearing her scream, her brother, son of the complainant, came there and on seeing him, the petitioner left the house of the complainant.

11. One aspect which needs to be noted at this stage is the evidence of P.W.4, who is the brother of the victim and stated to be present in the house at the time of the alleged occurrence. He had categorically stated in his evidence that he has not seen anything regarding the alleged occurrence and he also stated that the respondent police had not examined him. Moreover, there is no independent witness examined to prove the prosecution case.

12. The next aspect to be noted is that when the incident is alleged to have taken place on 9.3.2011, the complaint was lodged by the complainant only on 11.6.2011, i.e., after a delay of over three months. The reason given by the complainant for the delay is that the victim was appearing for 12th standard examinations. The said explanation offered by the petitioner does not merit consideration for the following reason.

13. It is a matter of record that on 1.6.2011, the petitioner sent a legal notice to the complainant specifically stating that he had constructed the church with his own funds and the efforts put in by the complainant as per the advice of some other pastors of the Church in evicting the petitioner from the Church had failed and as a last resort to evict the petitioner and grab the church property, the complainant had hurled sexual allegations against the petitioner and had spread derogatory and malicious statements against the petitioner. By the said legal notice issued by the petitioner, the complainant and others had been informed that the petitioner had already taken an initiative of filing defamation suit by claiming Rs.1

crore each for the damage that is caused to the petitioner.

14. If really as alleged by the complainant the occurrence had taken place on 9.3.2011, then the complainant would not have waited till 11.6.2011 to file a complaint. The reason given by the complainant that for more than three months the victim was busy with her examinations cannot be countenanced. It is apparent that only after legal notice was sent to the complainant on 1.6.2011 by the petitioner informing about the defamation suit filed by the petitioner against the complainant and others for Rs.1 crore each that the complainant opted to lodge a complaint against the petitioner.

15. It is beyond any cavil that FIR in criminal cases is vital and valuable piece of evidence though may not be substantive piece of evidence. In *Jai Prakash Singh v. State of Bihar*, (2012) 4 SCC 379, highlighting the object of lodging FIR, the Hon'ble Supreme Court held as under:

"12. The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime, was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberation. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question. (Vide: *Thulia Kali v. The State of Tamil Nadu*, AIR 1973 SC 501; *State of Punjab v. Surja Ram*, AIR 1995 SC 2413; *Girish Yadav & Ors. v. State of M.P.*, 1996(8) SCC 186; AIR 1996 SC 3098; and *Takdir Samsuddin Sheikh v. State of Gujarat & Anr.*, AIR 2012 SC 37).

16. The delay in lodging FIR, that too without adducing any acceptable reasons, makes the case doubtful. In *Jai Krishna Mandal v. State of Jharkhand*, (2010) 14 SCC 534, the Supreme Court held that delay of 3 days in lodging FIR is fatal to the prosecution, and observed as under:

"9. We also see from the order of the High Court that at the initial stage only a case under Section 366 read with Section 34, IPC had been registered

against the appellants but it was only after the statement under Section 164 had been recorded by the Magistrate that Section 376 had been added as well."

17. It is trite law that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. Delay creates a dent in the prosecution story and ushers suspicion in concocting such story. Because of delay, the FIR. not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of coloured version. There are certain aspects which require the appreciation of the Court when the delay in lodging the FIR. is pointed out. One category of such cases is where the delay has not been explained at all whereas in the other, the prosecution tries to explain the delay. Even in the first category of cases, the Court cannot outright reject the prosecution case. The Court has a duty to see whether there is any material on record which explains the delay in lodging the FIR and whether the delay has got any adverse effect on the prosecution case which has been otherwise established. In the second category of cases, the Court has to see whether the explanation for delay is satisfactory or not. There is no straight jacket formula that if the prosecution fails to explain the delay, the entire prosecution case should be disbelieved in toto and the accused should be acquitted.

18. Permissibility in condoning the delay depends upon the facts and circumstances of each case. The Court must place itself in the position of a victim, an informant or a family member of the deceased and assess the situation under which the FIR has been lodged. Mechanical approach to this vital aspect and blindly following some citations of different Courts without considering the facts and circumstances of that particular case will result in miscarriage of justice. Unexplained delay introduces serious infirmity in the prosecution case against accused. In the sexual offence, it is no doubt true that mere delay in lodging the FIR is not necessarily fatal to the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the Court must take notice. There may be several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge an FIR particularly in a case of sexual assault in a tradition bound society or in rural areas. Therefore, it would not be proper to disbelieve the prosecution case merely on the ground of delay of some days in lodging the FIR when the prosecution offers satisfactory explanation or where the Court on scanning of the evidence on record finds that the delay is very natural in the peculiar facts of the case.

19. In the case on hand, the only explanation given for the delay is the victim was cramming for 12th standard examination

It is only after the lawyer's notice issued by the petitioner in respect of defamation suit that the complainant chose to lodge the FIR. Therefore, this Court is of the firm view that the explanation which has been offered by the prosecution for delay in lodging the first information report is not satisfactory.

20. For the foregoing reasons, the revision case is allowed. The impugned judgments and orders of conviction by the Courts below are set aside and the petitioner is acquitted. The petitioner has been released on bail by this Court during pendency of the revision petition. He is discharged from the liability of his bail bonds. His personal bonds and surety bonds stand cancelled. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate II,
Poonamallee.
2. do The Chief Judicial Magistrate,
Thiruvallur.
3. The District and Sessions Judge,
Tiruvallur.
4. Principal Sessions Judge,
Thiruvallur.
5. The Public Prosecutor,
High Court, Madras.
6. The Inspector of Police,
Avadi Police Station,
Chennai (Crime No.380/2011)

+1cc to M/s.T.Ramadevi, Advocate sr.no.20430

Cr1. R.C.No.861 of 2017

nr 02/11/2018