

Bail Slip

The appellant herein/Accused Viz., Prabhu, S/O Padmanabhan, was directed to be released on bail as per order of the Court dated 17.06.2015 made in CrI.M.P.No.1 of 2015 in CrI.A.No.250/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.250 of 2015

Prabhu ... Appellant/Accused

Vs.

State Rep. by
The Inspector of Police (Law & Order),
R-5, Virugambakkam Police Station,
Chennai - 600 092.
(Crime No.1826 of 2010) ... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.280 of 2012 on the file of the Additional Sessions Judge, Mahila Court, Chennai and to examine the same and to set aside the judgment of conviction pronounced on 16.04.2015 holding the appellant guilty of the offences under Sections 328 and 376 of IPC and sentences of imposition passed thereby and imposition of fine amounts and to acquit the appellant and to set the appellant/ accused at liberty at once.

For Appellant : Mr.G.Prabhakaran

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

JUDGMENT

The instant appeal has been preferred by the sole appellant as against the judgment of conviction passed by the learned Additional Sessions Judge, Mahila Court, Chennai in S.C.No.280 of 2012 dated 16.04.2015.

2.The case of the prosecution according to the complaint dated 21.10.2010 is that on 14.06.2010 at about 11.00 a.m., when the Defacto-Complainant/PW1 was in her office, she was subjected under sexual intercourse by the appellant after administered her some sedative pills by mixing it in tea. Soon after the consumption of the tea given by the appellant, PW1 was got fainted and thereby the offence was committed by the appellant. Since PW1 was not in complete conscious, she was unable to resist but objected the same. However, according to the complaint PW1 stated that after getting full conscious, she got angry and assaulted the appellant, but the appellant was lamented and requested PW1 that he would marry her and he would not allow Pw-1 to marry anyone else. Further he also informed PW1 that he committed the offence only with an intention to get marry the PW1. However, though PW1 tried to commit suicide as her modesty was outraged, the same was prevented by the appellant.

3.The further case of the PW1 is that thereafter she returned back to her house and did not inform the same to her parents. Subsequently, on the request of the appellant, PW1 came to the office and one Ganesan, relative of the appellant, was also in the office and instructed PW1 that the parents of the appellant would not accept the marriage proposal of PW1 with the appellant and therefore, he advised PW1 to get marry the appellant. At the same time, Pw-1 that the appellant committed the offence even after knowing the fact that PW1 had love affairs with one Vinoth and the appellant prevented the marriage. In the meanwhile, as the PW-1 did not feel her usual monthly menstrual cycle, but felt nausea she subjected herself to a lab test and ascertained that she was pregnant. So, she took treatment with PW-7 and continued the medical treatment by taking medicines. It was her routine habit to take pills in the office and took the night medicines in a paper to her residence. Moreover, in an occasion, when PW-1 was taking medicines, the appellant insisted PW-1 that she has to take the medicines compulsorily as the appellant is the father of the child in the womb of PW-1. However, after two days she suffered with excessive bleeding. So, she again went to the hospital of PW-7, in turn PW-7 referred PW-1 to the hospital of PW-8 for the excessive bleeding, in the hospital of PW-8, where it was diagnosed that PW-1 suffered with abortion. When the abortion was informed by the PW-1 to the appellant, he informed PW1 that he only changed the medicines and caused abortion. However, all the medical records kept in a bureau were taken by the appellant without the knowledge of PW1. Since the activities of the appellant were adverse to Pw-1, she went to the residence of the appellant, but she was informed by one Ganesan and the appellant

to come on the next day. When PW1 went to the residence of the appellant along with the PW-10, the parents of the appellant assaulted PW-1. Hence, she lodged a police complaint but the same was not taken on file. In the meanwhile enquiry was subsequently conducted by the police and thereafter PW1 along with her mother went to the residence of an advocate where the appellant and PW-1 negotiated. In the meanwhile when the appellant was searched by police, he was not found, therefore on 21.10.2010 complaint was lodged by PW-1, the same was received by PW-5 and the case in Crime No.1828 of 2010 was registered.

4.Subsequently, investigation was commenced and as per law both the PW1 and the appellant were subjected for medical checkup by PWs-11 and 9 respectively. In the medical examination, it was found that PW-1 got pregnant and later it was aborted, as such the appellant was also found that he was potent. Further PW-1 was examined by PW-11 and found that PW1 was subjected for sexual intercourse and also subjected for abortion. At the completion of the investigation PW-13 filed final report against the appellant for the offence under Sections 328, 376, 417, 313 of IPC. However, PW-12 has also conducted major part of the investigation in this case.

5.Having received the charge sheet, the Learned Judicial Magistrate No.XXIII, Saidapet, Chennai, took cognizance and assigned PRC.No.280 of 2012 on his file. Subsequently the case was committed to the file of the learned Principal District Judge, Chennai and later it was made over to the file of the Additional Sessions Judge, Mahila Court, Chennai.

6.In the course of the trial proceedings prosecution has examined PWs1 to 13 and marked Exs.P1 to P14. On the side of the Appellant/accused, DW1 was examined but no exhibit was marked and on either side no material object is produced.

7.In the conclusion of the trial proceedings the learned trial judge found the appellant/ accused guilty under Sections 328, 376, of IPC. For the offence under Section 328 of IPC, the appellant was convicted and was imposed Rigorous Imprisonment of 10 years with the imposition of fine a sum of Rs.5,000/-, in default 6 months of imprisonment was also ordered. For the offence under Section 376 of IPC the appellant was convicted and was imposed Rigorous Imprisonment of 10 years with the imposition of fine a sum of Rs.5,000/-, in default 6 months

imprisonment was also ordered and the sentences were ordered to run concurrently. Feeling aggrieved over the judgment of conviction the instant appeal is preferred.

8.The learned counsel appearing for the appellant contended that the accused is an innocent and he has been roped in this case. He also pointed out that the evidence of PW1 has not been corroborated with any independence witness. Apart from that the total appreciation of the evidence of PW1 would reveal that the same is lack of trustworthy and the evidence found in the chief examination is completely against the evidence found in the cross examination. It is his foremost submission that evidence of PW1 cannot be taken into consideration by separating the same into chief examination and cross examination. When a Court of law taken up the evidence of a particular witness for consideration, it must include the chief as well as cross examinations. He also pointed out that in the absence of cross examination the Court cannot rely upon the chief examination alone generally.

9.According to the learned counsel for the appellant that in the instant case the learned trial judge has miserably failed to look into the evidence available in the cross examination of PW1. So, he prays this Court to interfere into findings of the learned trial judge and to hold to the same is unsustainable. Apart from that the learned counsel for the appellant has also brought to the notice of this Court the non-examination of one Ganesh who is the relative of the appellant and who allegedly negotiated the matter in between the PW1 and the appellant and also, one Vinoth, who admittedly had love affairs with PW1, would affect the case of the prosecution. Apart from that the evidence of PW-4, the building owner wherein PW-1 and the appellant run their office, has falsified the case of the prosecution as he has not stated anything about the alleged occurrence on 14.06.2010 and his evidence is not supported the version of PW1. According to the learned counsel for the appellant, the evidence of doctors has not supported the case of the prosecution, therefore he prays for the acquittal of the appellant/accused.

10.Per contra, the learned Government Advocate (Criminal Side) would strongly contend that the prosecution has proved that PW1 was molested by the appellant. The evidence of PW1 as per the evidence available in the chief examination was intact. At the time of chief examination PW1 has stated all the factual

events during the time of the commission of offence and other facts related to the case after the occurrence. He also brought to the notice of this Court that the chief examination of the PW1 was completed on 25.01.2013. On that day she was not subjected for cross examination nearly after 4 and half months that is on 25.02.2013 only she was cross examined by the appellant/accused. In the mean time possibilities are that PW1 could have been intimidated or won over for several reasons. So, it is the submission of the learned Government Advocate (Criminal Side) that the evidence of PW1 should be compared with her complaint Ex.P1. Apart from that the non examination of one Ganesh and Vinoth would no way affect the prosecution case in any manner. Moreover, the evidence of PW1 especially her sexual harassment at the hands of the appellant is proved by the evidence of PWs 7, 8 and 11. Since the offence of sexual molestation of a woman is a heinous offence and the same should be curbed with iron hands. Hence he prays for the dismissal of the appeal.

11.As far as the commission of offence related with molestation of a women is no doubt an offence of gender domination. Though it is for the man kind to adopt and observe gender equality, it should be practiced from the childhood. Further human rights and woman rights must be commenced, observed, practiced and adopted from the home and from each individual. The parents must treat the children equality without any gender inequality. Then only the forthcoming generation would have the mindset that there is no gender inequality in the human kind. Apart from that it must be the curriculum of the State Government by including the awareness in the gender equality and education about awareness of sex. These are the methods which would help the human kind to eradicate the heinous offence of sexual molestation of a woman. Keeping the above discussion in the mind, let me analyze the evidence available and take up the same for appreciation in accordance with law.

12.The foremost submission of the learned counsel for the appellant would be that the learned trial judge has miserably failed to appreciate the evidence of PW1 in total. Though there is no corroborative evidence is available for the evidence of PW-1, the learned trial judge is simply relied on the chief examination of the PW1, which is erroneous and unsustainable. He also pointed out that even the chief examination of PW1 is taken up for appraisal; the same would show that PW1 is the consenting party for the act of the appellant. Both of them were having sexual intercourse with each other often and on several occasions. PW1 has attained majority and at the time of the

alleged occurrence she was 23 years old. She knows what is good and bad. In case, if she was molested as alleged, a prudent woman must disclose the fact either to the parents or to any of her friends. In this case the subsequent conduct of the PW1 does not inspire confidence in the mind of this Court that PW1 was subjected for sexual abuse in the hands of the appellant. Her evidence in the chief examination itself would show that she was a consented party.

13. Though it is deposed by PW1 that even she attempted to commit suicide on the day of the occurrence by locking the door the appellant knocked the same and on hearing the melee, the building owner that is PW4 came to the portion rented out by him to the PW1 and the appellant. According to PW1, PW4 also enquired with the appellant what the noise was, for that the appellant informed him that the latchet was not opened. If at all PW1 was not a consenting party, she would have very well disclose the offence immediately to PW4, by raising alarm. The perusal of evidence of PW-4 does not show any of these allegations or facts as narrated by PW1. More so, during the time of examination PW-4 has not been treated as hostile witness and no question was put forth by the prosecution in this regard. So, the only evidence available to corroborate the version of PW-1 though is PW-4 that was not utilized by the prosecution to prove the case. Though this Court is very conscious in dealing with such kind of offence this Court is also and more so, responsible to answer the famous legal maxim "Fiat Justitia Ruat Caelum".

14. The total consideration of the evidence of PW-1 is not only contradictory but the same is self contradictory also. As far as contradictory evidence is concerned it can be corroborated by some other witnesses. But, self contradiction is very dangerous and no trustworthy can be placed upon the same. At this juncture it is usual to refer the judgment relied on by the learned counsel for appellant reported in 2018(1) MLJ Criminal 582, wherein it is held that

"In the instant case, the very complaint of attempt at rape has been preferred, admittedly eighteen days after the alleged occurrence. The prosecution contention of complaint being delayed owing to non availability of the sub inspector at the Police Station cannot be countenanced. The prosecution case finds no support whatsoever, from the evidence of any witnesses other

that the alleged victim PW1. The prosecution Exhibits, viz., Ex.P2 Accident register of P.W.1 and Ex.P4 - Chemical examination report, also do not reflect any thing that would suggest any wrong doing on the part of the appellant/accused. It is also the admission of PW1 in her cross examination that there was a dispute between her and the appellant/accused over a transaction relation to property and she further admits that she was in talking terms with the wife of the appellant/accused prior to the said dispute and of not being on talking terms subsequent thereto. In such circumstances, the possibility of false implication of the appellant/accused looms large."

15. In the instant case also there is a delay of nearly 4 months for which no reasonable explanation is afforded. Ex.P11 the Accident Register appears to be dictated and the admission given by PW-1 that she did not have good terms followed by the loss arisen in the business and in this regard she also lodged a police complaint are to be viewed with sound rational. Moreover, she has admitted in the cross-examination that the appellant did not give any tablet to her and between PW1 and the appellant no physical relationship was there at any point of time. She has completely given a contradictory version in the cross examination. Though it is submitted by the Government Advocate Criminal Side that Pw-1 may be influenced, it cannot be presumed, but it must be proved.

16. The counsel for the appellant also relied on another judgment reported in 2013 (4) MLJ Criminal 62 (SCC). The ratio laid down in the said judgment

"Victim's version in rape commands great respect and acceptability, but, if there are some circumstances which cast some doubt in the mind of the Court of the veracity of the victim's evidence, then, it is not safe to rely on the uncorroborated version of the victim of rape."

17. Having regard to the ratio laid down by the Hon'ble Supreme Court in the aforesaid case, I concur with the facts and circumstance of the instant case is tallied with the aforesaid cases dealt with and decided by the Hon'ble Supreme Court.

18.So, I am of the considered opinion that the prosecution has not proved the case beyond all reasonable doubt, so in my opinion that the appellant/accused is entitled the benefit of doubt, accordingly the judgment of learned trial Court is set aside and the appeal is allowed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vs
To

- 1.The Additional Sessions Judge,
Mahila Court, Chennai.
- 2.The Superintendent,
Central Prison,
Puzhal, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Inspector of Police, (Law & Order)
B-5, Virugambakkam Police Station,
Chennai.

Copy to

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

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Cr1.A.No.250 of 2015

mr[co]
srg 12/06/2018