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Bail Slip

Mr.R.Mariappan aged 38yrs S/O.Rangasamy accused in S.C.NO.102/07 on the file of Sessions Court, Coimbatore was enlarged on bail in M.P.1 of 2009 in Crl.A.No.47 of 2009 by this Court's order dated 23/03/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.A.No.47/2009

R. Mariappan

.. Appellant

Vs.

State rep. by,
The Inspector of Police,
Chettypalayam Police Station,
Kinnathukadavu,
Coimbatore District,
(Crime No.148/2006)

.. Respondent

Criminal Appeal filed under Section 374(ii) of the Criminal Procedure Code praying to set-aside the order of conviction and sentence imposed on the appellant in S.C.No.102 of 2007 dated 29.08.2008 by the learned Sessions Judge, Mahila Court, Coimbatore.

For Appellant : Mr.Vimal.B.Crimson

For Respondent : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

The appellant herein is the sole accused in SC.No.102/2007 on the file of the Court of Sessions Judge, Mahila Court, Coimbatore. He stood charged and tried for the commission of the offence u/s.376 read with 511 IPC and the Trial Court, vide impugned Judgment dated 29.08.2008, has convicted the appellant for the above said offence and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.2000/- with a default sentence of two years simple imprisonment. Challenging the said conviction and sentence, the present appeal is filed.



2 The facts of the prosecution case that are necessary for the disposal of this appeal, in brief, are as follows:-

[a] P.W.1 - Rukmani is the victim in this case and she is the wife of Mr. Veerasamy and she is a resident of Periyar Samathuvapuram, Chettipalayam. The appellant/accused was working as a Watchman in the Panchayat Union Overhead Tank, Chettipalayam. P.W.1 used to graze sheep and her husband was a coolie. The couple occupied the house belonging to one Pappathi at the instance of the appellant/accused and after the demise of Pappathi, P.W.1 paid a sum of Rs.15,000/- to one Valli - mother-in-law of Pappathi, as sale consideration for the house occupied by her. The appellant/accused demanded a further sum of Rs.10,000/- towards payment of house tax, to which demand, P.W.1 reprimanded the appellant/accused and said that she is willing to part with the said amount provided the right and title of the house is transferred in her name. There arose a dispute between P.W.1 and the appellant/accused and on one occasion, the appellant/accused pelted stones on the house of P.W.1 and P.W.1 shouted at him and she also informed the said act of the appellant/accused to her sisters, who are residing nearby. Six days later, the appellant/accused, under the guise of extending help to P.W.1 to take treatment of a doctor, had invited P.W.1 to accompany him. P.W.1 warned him not to indulge in such activities and this action of the appellant/accused was also informed to the wife of the appellant/accused by P.W.1. She advised P.W.1 to advance warning to the appellant/accused to avoid further unwanted happenings.

[b] On 08.07.2006 at about 13.00 hours, when P.W.1 was grazing sheep, the appellant/accused, with an intention to commit rape on P.W.1, pushed her down and since his attempt proved futile, he ran away from the spot. On the next day, i.e., on 09.07.2006, she complained about the occurrence to the Panchayat President of the said village, who in turn reduced the same into writing and she along with her mother took the complaint and went to the respondent Police Station and since the Sub-Inspector of Police was not available, she returned back home. Since her attempts to see the Sub-Inspector of Police attached to the said Police Station for the purpose of lodging the complaint did not fructify on account of the non-availability of the Investigating Officer, she went to the police station after ten days, i.e., on 26.07.2006 and lodged the complaint under Ex.P.1.

[c] P.W.8-Veerammal, was the Sub-Inspector of Police attached to the said police station. Upon receipt of the complaint under Ex.P.1 from P.W.1 on 26.07.2006, she registered a case in Cr.No.148/2006 for the offence u/s.376 read with 511 IPC. Ex.P.6 is the FIR. She despatched the originals of the



complaint [Ex.P.1] and FIR [Ex.P.6] to the jurisdictional Magistrate Court and copies of the same to the higher officials.

[d] P.W.10-Ravidran, the Inspector of Police attached to the respondent Police Station, on receipt of the FIR, commenced the investigation and on 26.07.2006 at about 14.30 hours, went to the spot, identified by P.W.1-Rukmani and prepared the Observation Mahazar [Ex.P.5] and Rough Sketch [Ex.P.7] in the presence of P.Ws.5 and 7. He examined P.Ws.1, 5 and 7 and recorded their statements. He sent P.W.1 for medical examination along with a requisition through Lakshmi-Grade I Constable attached to the respondent Police Station.

[e] P.W.2-Dr.Anitha Moses, was the Assistant Professor attached to the Coimbatore Medical College Hospital and she examined P.W.1 on 28.07.2006 at about 14.30 hours. P.W.1 had told P.W.2 that the appellant/accused had tried to rape her. On examination, P.W.2 found no external or internal injuries on her private parts. She issued the Accident Register marked as Ex.P.2.

[f] P.W.10, in continuation of the investigation, arrested the accused on 27.08.2006 near Malumichampatty Bus Stand in the presence of one Murugan and the accused voluntarily came forward to give a confession statement. Subsequent thereto, he was sent for judicial remand. He also sent the appellant/accused for medical examination along with a requisition [Ex.P.8].

[g] P.W.3-Dr.Mahadevan, was the Assistant Professor attached to Department of Sexually Transmitted Disease in the Government Medical College Hospital, Coimbatore, at the relevant point of time and the appellant/accused was produced before him by the Police Constables Manikandan and Azhagappan on 11.10.2006 at about 11.00 hours for potency test. The appellant/accused was examined by a team consisting of 3 doctors and issued Ex.P.3-Potency Test Report, wherein it was opined that "there is nothing to suggest that the person is impotent."

[h] P.W.10 in continuation of the investigation, examined P.W.2-Dr.Anitha Moses and Murugan and recorded their statements. Since he was transferred, he handed over the case details to his successor.

[i] P.W.11-Elangovan, was the Inspector of Police/Station House Officer attached to Kinathukidavu Police Station at the relevant point of time. On receipt of the case details in respect of Cr.No.148/2006 from P.W.10, he took up the investigation and examined P.W.3, the doctor who conducted potency test on the appellant/accused and recorded his statement.

P.W.11, after completion of the investigation, has filed the charge sheet / final report against the appellant / accused



for the offence

u/s.376 read with 511 IPC before the learned Judicial Magistrate, No.7, Coimbatore, who took it on file in PRC.No.8/2007 and issued summons to the accused and on his appearance, furnished him the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of Sessions Judge, Mahila Court, Coimbatore, who took it on file in SC.No.102/2007 and on appearance of the appellant / accused, had framed the charge u/s.376 read with 511 IPC and questioned him. The appellant / accused pleaded not guilty to the charges framed against him.

[j] The prosecution, in order to sustain their case, examined P.Ws.1 to 11 and marked Exs.P.1 to 8.

[k] The appellant/accused was questioned under section 313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied it as false and on the side of the appellant/accused, no witness was examined and no documentary evidence was marked.

[l] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as stated above and hence, this appeal.

3 The learned counsel for the appellant/accused would submit that the prosecution has not proved its case beyond reasonable doubt. He would submit that the present case is false and foisted against the appellant/accused on account of the enmity that exist between him and P.W.1 as regards the transfer of the title of the house in which P.W.1 was residing at the instance of the appellant/accused. Learned counsel would further add that even on cross-examination, P.W.1 has admitted that she did not give any complaint against the appellant/accused alleging that he had raped her. There are several improvements in each and every stage of the investigation. Learned counsel would also point out that there is enormous delay in lodging the complaint by P.W.1 as the alleged occurrence is said to have taken place 08.07.2006 and the complaint was given on 26.07.2006. He also placed heavy reliance upon the medical report-Ex.P.2 [Accident Register] pertaining to P.W.1, in support of his contentions. It is the submission of the learned counsel for the appellant/accused that there are several inconsistencies and infirmities in the case of the prosecution and the Trial Court, without properly appreciating the material particulars, had erroneously reached



the conclusion of convicting the appellant/accused for the offence u/s.376 read with 511 IPC and prays for setting aside of the same.

4 Per contra, Mr.V.Arul, learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved its case beyond any reasonable doubt and though there are certain minor discrepancies, the same would not shake the foundation of the prosecution case and submits that this Court, in exercise of its Appellate Jurisdiction, may not interfere with the impugned judgment and prays for dismissal of the appeal.

5 The Court has considered the rival submissions and also perused the materials placed before it including the original records and the impugned judgment of the Trial Court.

6 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 than the alleged victim-P.W.1. The prosecution exhibits, viz., Ex.P.2-Accident Register of P.W.1 and Ex.P.4-Chemical Examination Report, also do not reflect anything that would suggest any wrong doing on the part of the appellant/accused. It is also the admission of P.W.1 in her cross-examination that there was a dispute between her and the appellant/accused over a transaction relating 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.

7 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in S.C.No.102 of 2007 dated 29.08.2008 are hereby set aside and the appellant/accused is acquitted of the charge levelled against him. Fine amount, if any paid, shall be refunded to him.



8 It is reported that the appellant/accused is on bail.
Bail bond executed by him, shall stand terminated.

AP

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ASSISTANT REGISTRAR [CS VIII]

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

- 1.The Sessions Judge,
Mahila Court, Coimbatore.
- 2.The Principal District and Sessions Judge
Coimbatore.
- 3.The Judicial Magistrate No.7,
Coimbatore.
- 4.The Chief Judicial Magistrate,
Coimbatore.
- 5.The Inspector of Police,
Chettypalayam Police Station,
Kinnathukadavu,
Coimbatore District.
- 6.The Superintendent of Prison
Central Prison, Coimbatore.
- 7.The Director General of Police
Mylapore, Chennai-4.
8. The Public Prosecutor,
High Court,
Madras.

+1CC to Mr.Vimal B. Crimson Advocate SR.NO.553

Cr1.A.No.47 of 2009

SS[CO]
MK:03/02/2018