

BAIL SLIP

Mr.Palanisamy aged 29 years S/o.Chittan accused in S.c.37/07 on the file of Sessions Judge for women, Salem (Mahila Court) was enlarged on Bail in M.P.No.1/2008 in Crl.A.654/08 by this Court vide Order dated 09/01/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.07.2018

PRONOUNCED ON : 24.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.A.No.654 of 2008

Palanisamy
S/o.Chittan

... Appellant

Vs

The State by
The Inspector of Police,
All Women Police Station,
Sooramangalam Police Station,
Salem.

.... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the order in S.C.No.37 of 2007 dated 04.06.2008 made by the learned Sessions Judge for Women (Magalir Court), Salem.

For Appellant : Mr.J.Franklin

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This appeal preferred as against the conviction and sentence made in judgment dated 04.06.2008 in S.C.No.37 of 2007 on the file of the Sessions Court for Women (Magalir Neethemandram), Salem for the offences under Sections 366A, 376 and 506(ii) of IPC and sentenced him to undergo seven years rigorous imprisonment and fine of Rs.1,000/- in default three months rigorous imprisonment for the offence under Section 366A and to undergo seven years rigorous imprisonment and pay a fine of Rs.1000/- in default to undergo three months rigorous

imprisonment and for the offence under Section 376 of IPC and to undergo rigorous imprisonment for one year and fine of Rs.1,000/- in default to undergo three months rigorous imprisonment for the offence under Section 506(ii) of IPC.

2. The case of the prosecution in brief is that P.W.1, the mother of the victim lodged a complaint stating that on 15.03.2006 at about 7.30 a.m., her daughter minor Vijaya was kidnapped and threatened her life to dire consequences by the appellant/accused and the victim was taken in bus and got down at Kaverikarai bus stop and proceeded to hills side and committed rape on her. On receipt of the said complaint P.W.11 registered a case in Crime No.17 of 2006 against the accused for the above said offences.

3. The investigation was taken up by the Inspector of Police, P.W.11 and the victim was medically examined by P.W.7 and P.W.9 Radiologist and Pathologist, respectively. After recording the statement of witnesses and collecting evidence during the course of the investigation, P.W.11 laid charge sheet under Sections 366A, 376 and 506(ii) of IPC. The trial Court framed charges under Sections 366A, 376 and 506(ii) of IPC against the appellant and the appellant denied the said charges framed against him and claimed trial.

4. During the trial, the prosecution examined P.W.1 to P.W.11 and marked Ex.P.1 to Ex.P.16 and produced M.O.1 to M.O.3. P.W.1 the mother of the victim has been examined, who supported the First Information Report version and proved the complaint Ex.P.1. P.W.2, the victim has been examined, who supported the case of the prosecution and deposed that on 15.03.2006, when her mother P.W.1 went for her avocation she was sleeping in her house. The accused, who had come as guest to her neighbour house, called the victim to go to her mother's work place. When she questioned about her mother, the accused threatened her and boarded into a bus. He got down at Kaverikarai bus stop and compelled her to have sexual intercourse. Even though she refused, the appellant compelled her and raped her. Thereafter, she shouted and the neighbours rescued her and brought her to home. When P.W.2 reached her mother and explained the occurrence and thereafter P.W.1 lodged the complaint.

5. P.W.3, the sister of the victim P.W.2, has been examined, who supported the case of the prosecution. P.Ws.4 to 6 have also been examined to support of the prosecution. P.W.7 has been examined, who has proved that the victim was aged about 16 years and not completed 17 years at the time of occurrence, as per the report Ex.P.3. P.W.9 has been examined, who has deposed that the victim was medically examined by her and proved the medical examination report of the victim Ex.P.8. The report is

reproduced below :-

"She is quiet, calm. Answering questions.
Gait - Normal,
Pl- 78/mt CVS - RS -NAD
Face, Breast, Abdomen - No ext. injuries
L/E Pubic hair 1 cmX1 cm long Not matted
Perineum - No ext. injuries
PV Hymen Not intact
Vagina admits 2 fingers easily
Cervix ut RV NS Farnix free
Blood on examining fingers
Vaginal smear taken, sent for
chemical analysis opinion reserved pending
chemical analysis report. Sd/ 21.03.2006
08.07.2006
No evidence of recent sexual act.
Sd/- 06.07.2006"

P.W.11 has been examined, who has deposed that investigation of the case was conducted and the statement of the witnesses were recorded by him during the course of investigation. The dresses of the victim were marked as M.O.1 to M.O.3.

6. Under Section 313 of Cr.P.C., the statement of the appellant/accused recorded and the accused stated that the prosecution evidences were false and he has been implicated due to previous enmity. But no witnesses was examined on behalf of the appellant/ accused in his defence. After considering the evidence and materials on record, the trial Court convicted the appellant/accused for the above said offences as stated above. The said conviction and sentence passed against the appellant/accused is now challenged in this appeal.

7. The learned counsel for the appellant contended that there was a delay in lodging the complaint and registering the First Information Report and it is fatal to the case of the prosecution, and the entire version of the prosecution is not true. He further submitted that according to the P.W.1 and P.W.2, the place of occurrence was differ and as such the prosecution failed to prove the case beyond any dobut.

8. Further the learned counsel appearing for the appellant would contend that the age of the victim, P.W.2, is not proved by proper medical examination. As per the medical evidence, the age of the victim is 16, and she has completed 16 years not above 17 years, in which, two years variation possible on either sides and the victim was major at the time of occurrence. The statement of the victim is not supported by any other witnesses and also there is a contradiction appeared in

the version of the prosecution witnesses due to which, the prosecution version is doubtful. Further more he contended that the victim is a consenting party, since she was aged above 18 years at the time of occurrence. Further submitted that the prosecution has not proved the case beyond any doubts and hence, this conviction deserved to be set aside.

9. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that plausible explanation has been given for the delayed FIR and the victim was minor on the date of occurrence, as per the medical certificate issued by P.W.7. The entire conviction of the accused can be based on single testimony of the victim, if it is the best testatory. He further submitted that the prosecution version cannot be thrown away based on the minor contradiction appearing in the evidence of the prosecution witnesses. The consent of the victim is immaterial as she was minor on the date of occurrence. There is no specific and adequate reason to reduce the minimum sentence of seven years imposed on the appellant/accused for the offences under Sections 366A, 376 and 506(ii) of IPC. Therefore, he submitted that the appeal has no merit and it is liable to be dismissed.

10. Heard the arguments advanced by Mr.J.Franklin, learned counsel appearing for the appellant and Mr.R.Ravichandran, learned Government Advocate (Crl.Side) and perused the records.

11. It is borne out from the records that P.W.1, the victim has supported the prosecution version and deposed that the appellant/ accused had threatened her and taken away her to hills side and on compulsion and threatening raped her. She has also proved the statement of her mother P.W.1, who has also supported the prosecution version and proved the complaint Ex.P.1. P.W.2 also subjected to medical examination and the medical examination report proved her age that she completed the age of 16 and not crossed the age of 17. Further the Pathologic examination and X-ray examination proved the other requirements.

12. The first contention of the learned counsel for the appellant is that there is a delay in lodgment of complaint and registering the First Information Report. On 15.03.2006, the victim was kidnapped by the appellant and on 16.03.2006, Ex.P.1 the complaint was lodged by P.W.1 and it was registered on 18.03.2006 by P.W.11. Accordingly, it is established from the records that plausible explanation has been given by the prosecution for delay in lodging the First Information Report. In this regard, the Hon'ble Supreme Court of India held in the judgment reported in "2015(4) SCC 762 - Deepak Vs. State of Haryana" and the relevant portion is reproduced here under:-

"in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the

reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. Indeed, this has been the consistent view of this Court as has been held in State of Punjab vs. Gurmit Singh & Ors."

13. Considering the aforesaid facts and circumstances of this case and law laid down by the Hon'ble Supreme Court of India in the above case, the explanation given by the prosecution for delay in lodging the First Information Report in the present case appears to be possible. Hence, there is no force in the aforesaid argument advanced by the learned counsel for the appellant.

14. The next contention raised by the learned counsel for the appellant is that the age of the victim girl differs from her medical records and the evidence of P.W.1. It is borne out from the records in Ex.P.3, the victim was only 16 years at the time of occurrence. Accordingly, the contention of the learned counsel for the appellant cannot be sustained. As far as the further contention of the learned counsel for the appellant that the evidence of victim is not supported by the evidence of any other witnesses. It is settled proposition of law that the evidence of victim is treated at par with the evidence of injured witness and the testimony can be relied without corroboration of any other witnesses, if it is found to be trust worthy. Further it is borne out from the records that some minor contradictions appeared in the testimony of the prosecution witnesses, regarding the manner in which the victim was kidnapped, in which she entice away by the appellant/accused and the manner in which she was rescued, from the hands of the accused. It is settled law that the evidence of the witnesses cannot be thrown away based on the minor discrepancies appeared in their testimony.

15. For all the reasons mentioned herein above, this Court is of the considered opinion that the evidence recorded by the trial Court are based on proper appreciation of all evidence available on records and there is no illegality or infirmity in the impugned judgment passed by the trial Court. The appeal is devoid of merits and it is liable to be dismissed.

16. Accordingly, the appeal is dismissed and the impugned judgment and order of conviction and sentence passed by

the Sessions Court for Women (Magalir Neethemandram), Salem, in S.C.No.37 of 2007 dated 04.06.2008 is hereby confirmed. The respondent is directed to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

rts

To

1. The Presiding Officer
Sessions Court for Women
Magalir Court, Salem.
2. The Inspector of Police,
All Women Police Station,
Sooramangalam Police Station,
Salem.
3. The Judicial Magistrate,
No.II, Salem.
- 4.The Chief Judicial Magistrate,
Salem.
- 5.The Superintendent,
Central Prison, Coimbatore.
6. The Public prosecutor,
High Court, Madras.
- 7.The Section Officer,
Criminal Section,
High Court, Chennai-104.

CRL.A.654 OF 2008

SS(CO)
GN(06/08/2018)