

Bail Slip

The Petitioner in Crl.RC.No.246 of 2013 viz Rajasekaran aged 25 years S/o Gurusamy was directed to be released on bail as per order of this Court dated 18.03.2013 and made in MP.NO.1/13 IN Crl.RC.No.246 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.09.2018

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.RC.No.246 of 2013
and MP.No.1 of 2013

Rajasekaran

... petitioner

-Vs-

State by Inspector of Police,
Anthiyur Police Station,
Erode District.
Cr.No.149 of 2009

... Respondent

Prayer: Criminal revision is filed under Section 397 and 401 of the Criminal Procedure Code, to call for the records relating to the conviction imposed in the judgment dated 15.12.2012 made in CA.No.157 of 2012 on the file of the Principal Sessions Judge, Erode confirming the judgment dated 08.08.2012 made in SC.No.126 of 2011 on the file of the Assistant Sessions Judge, Bhavani and set aside the same by allowing this revision petition.

For petitioner : Mr.N.Manokaran.
For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl.side).

O R D E R

The criminal revision is filed against the judgment dated 15.12.2012 made in CA.No.157 of 2012 on the file of the Principal Sessions Judge, Erode confirming the judgment dated 08.08.2012 made in SC.No.126 of 2011 on the file of the Assistant Sessions Judge, Bhavani.

2. The accused is the petitioner in this criminal revision.

On 24.04.2009 at 6.00pm, the victim girl went to attend the nature's call at Pearl Millet field of Gurusamy, the accused took her to a secluded place in the field and stripped her dress and made nude. Thereafter, the accused made her to lie and placed his penis over her vagina and attempted to rape

her. Then, the victim girl raised alarm, the accused fled away from the place. The mother and her relative Poongodi had gone to search the girl, as she didn't return back even after long time, when they were nearby the house of Uma Maheswari, the victim girl was running towards her mother crying "Amma" "Amma" save me. The victim girl was nude and Vaishnavi was there at some distance. At that time the accused was running away with undergarment alone without lungi, the mother and others were noticed the scene and after wearing skirt and blouse to the victim girl she was brought to her home. The mother of the girl informed the incident to her husband on the same day night. On the next day i.e, on 25.04.2009, the father of the victim girl went to the Anthiyur police station at about 12.30pm and lodged a complaint. The sub inspector of police attached to the police station, on receipt of the complaint registered a case in Cr.No.149/2009 under Section 376 r/w.511 of IPC and sent to the learned Judicial Magistrate, Bhavani and thereafter the case was taken up for investigation.

3. During the course of investigation, on 26.04.2009 at about 7.00am the accused was arrested and sent to judicial custody. The victim girl and the accused were sent for medical examination. PW9/Doctor Sangeetha working at Anthiyur Government Hospital had examined PW2/Victim Girl and issued accident register/Ex.P4 in which she had stated that (a)no external injuries and (b)no bleeding in private parts and referred PW2 to Erode Government Hospital for Gynaecologist opinion. After inspecting the victim girl PW10/Doctor Vijayalakshmi working at Erode General Hospital issued an accident register copy for sexual offence under Ex.P5 in which she has stated that on external examination of genitalia the hymen was intact and there was no injuries over the genitalia and no injuries over the chest.

4. PW11/Doctor Lakshmi working at Erode Government Hospital had examined the accused Rajasekaran to ascertain his potentiality. On 28.04.2009, she issued an accident register copy under Ex.P6 in which she had stated that there is nothing to suggest that he is impotent.

5. On 07.05.2009, the PW12/IO investigated PW6/Uma Maheswari and recorded her statement and examined PW9, PW10 and PW11/Doctors and recorded their statements. Thereafter, on 14.07.2009, PW12/IO verified the registers for birth and death at Anthiyur under Ex.P3 and recorded the statement of PW8/Sathishkumar. After completion of the investigation, final report was filed against the accused for the offence under Section 376(2)(f) r/w.511 IPC. The learned Judicial Magistrate, Bhavani took up the case on file in PRC.No.12 of 2011 and committed the case for trial to the Court of Sessions

at Erode.

6. In order to prove the case of prosecution, the prosecution has examined PW1 to PW12 and marked Exs.P1 to P9.

7. After completion of trial and after hearing both sides, the trial Court found guilty and convicted the accused for the offences under Section 376(2)(f) r/w.511 of IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default to undergo one month simple imprisonment. As against the said order, the accused preferred an appeal before the Principal District and Sessions Judge, Erode in CrI.A.No.157 of 2012, the appellate Court after hearing both sides comes to a conclusion by its judgment dated 15.12.2012 by confirming the order of the trial Court.

8. Aggrieved against the said judgment dated 15.12.2012 passed by the learned Principal District and Sessions Judge, Erode, the petitioner is before this Court by way of present revision.

9. The learned counsel for the petitioner would submit that there is no external injuries found in the private parts of the victim girl. The PW2/victim girl herself admitted that there is no external injury on her body and private parts. Even the evidence of the Doctors who examined the PW2 has also certified that there is no external injuries found in the private parts of the victim girl and there is no penetration, rape has not been made out.

10. The learned Government Advocate (CrI. Side) would submit that it is only an attempt, PW2 is the victim girl aged about 9 years at the time of occurrence. PW1 and PW5 are the parents of the victim girl. PW2/victim girl has clearly stated that the accused had closed her mouth with the cloth and taken her and tried to penetrate his private parts. At that time, the PW1 came near to the place and searching for PW2, if PW2 has not reached the place the accused would have succeeded the offence.

11. Heard the rival submissions made on both sides and perused the records.

12. On a perusal of records it is seen that the occurrence took place on 24.04.2009 at 6.00pm, the FIR was lodged on the next day i.e, on 25.04.2009, the delay in lodging the FIR was not properly explained. Though, PW1 in her evidence clearly says that PW2 is the mother. PW1 clearly states that the prosecution had lodged the complaint under Section 376(2)(f) r/w.511 IPC for attempt to rape.

13. From the evidences of PW1, PW2 and PW5, the prosecution had clearly proved that the appellant had made an attempt to rape, if the mother of the PW2 would not have come at the relevant point of time, the petitioner would have committed the offence. It is well settled proposition, that the quality of the evidence alone can be considered and not quantity of the witnesses. The evidence of the PW2 has clearly spoken that the petitioner had made an attempt to penetrate her, when the mother of PW2 reached near the place, the petitioner ran away from the spot, only with his briefs. Thus, the complainant/PW2 has given valid reason for filing the complaint and also in the case like this the Court cannot expect the illiterate parents to prefer a complaint immediately, as if they have to see the future of the minor female child. In villages, the peoples used to complain with the elders in the villages to passify the issue, when the accused is beyond the control of the elder members of the villages, thereafter the affected party will prefer the complaint at last, in order to avoid future complications.

14. In this case, the evidences of PW1, PW2 and PW5 has clearly proved the case beyond reasonable doubt. Especially the evidence of the victim girl/PW2 has been substantiated the case of the prosecution and there is no reason to discard the evidence of PW2.

15. The learned counsel for the petitioner has also emphasised two grounds for not believing the case of the prosecution (i)delay in lodging the complaint and registering the FIR and (ii)no external injuries found in the private parts of PW2. From the evidence of PW1, it is clear that the petitioner attempted to rape PW2 and it is the case of the prosecution that the petitioner forcibly tried to have sexual intercourse with the minor child, only after seeing the PW1 coming near to the place, the petitioner fled away with his briefs, therefore, the complainant has given the complaint. In the case like this, one cannot expect the parents of victim girl to prefer a complaint immediately, as they have to see the future of the minor female child.

16. The evidence of PW2/victim girl who is aged about 9 years at the time of occurrence has clearly spoken about the involvement of the petitioner and substantiated the case of the prosecution. The delay in lodging the complaint in the case of this nature is not fatal to the prosecution case.

17. Since, the Courts below are fact finding Courts and appreciated the entire evidence and found the petitioner is guilty for the offence under Section 376 r/w.511 of IPC. The appellate Court is final Court of fact finding also

reappreciated the entire evidence independently and dismissed the appeal. This Court while exercising the revisional jurisdiction cannot reassess the evidence and it has to see any perversity is found in appreciation of evidence. This Court does not find any perversity in the judgment of the appellate Court in appreciating the evidence. In this regard, it is pertinent to refer to the decision of the Hon'ble Supreme Court reported in the case of State of Kerala Vs. Putthumana Illath Jathavedn Namboodri, reported in AIR 1999 SC 981 held as follows:

".... In its revisional jurisdiction, the High court can call for and examined the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or property of any finding, sentence or order. In other words, the jurisdiction is one of Supervisory Jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of Second Appellate Jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to re-appreciate the evidence and come to its own conclusion on the same when the evidence has already be appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of Justice...."

18. In the result, the criminal revision stands dismissed by confirming the conviction and sentence imposed by the Courts below. The trial Court is directed to take steps to secure the custody of the petitioner/accused to undergo the remaining period of sentence, if any. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge, Erode.
2. The Assistant Sessions Judge, Bhavani.

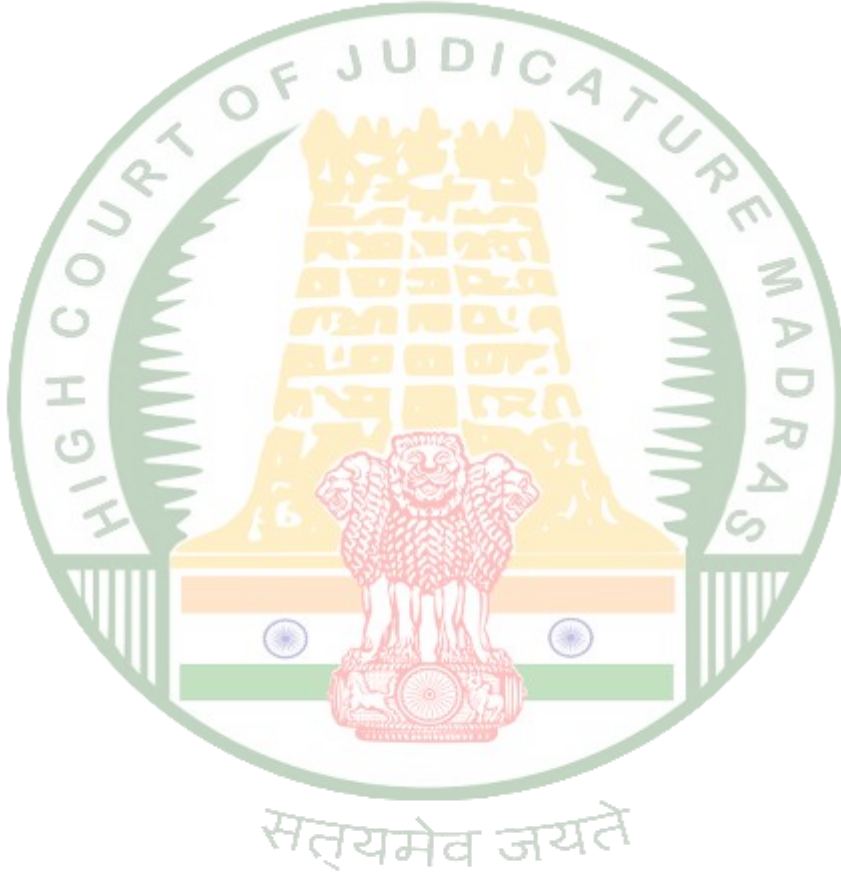
3.The Judicial Magistrate,Bhavani
4.do thro the Chief Judicial Magistrate, Bahavani
5.Inspector of Police,
Anthiyur Police Station,
Erode District.

6. The Public Prosecutor,
High Court, Chennai - 104.

+lcc to Mr.N.Manokaran. , Advocate SR.No. 63637

Cr1.RC.No.246 of 2013

A.SK(09/07/2019)



WEB COPY