

**BAIL SLIP**

The Appellant/Accused viz., Velusamy, S/o.Subramaniyan, was released on bail as per the order of this Court dated 30.01.2008 made in MP(MD)No.1 of 2008 in Crl.A(MD)No.667 of 2007.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL A(MD)No.667 of 2007

Velusamy ... Appellant / Sole Accused

Vs.

State represented by
The Inspector of Police,
Thuraiyur Police Station,
Trichy District.
(Crime No.263/06)

... Respondent / Complainant

Prayer: Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, praying to set aside the judgment and conviction passed by the Additional Sessions Judge (Mahila court), Tiruchirapalli in S.C.No.77 of 2007 dated 15.11.2007 and acquit the appellant herein.

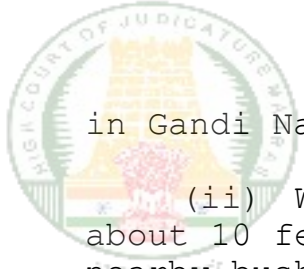
For Appellant : Mr.T.Senthil Kumar
For Respondent : Mr.K.Dinesh Babu
Additional Public Prosecutor.

JUDGMENT

This Criminal Appeal is filed against the judgment and conviction rendered by the Additional Sessions Judge (Mahila Court), Tiruchirapalli in S.C.No.77 of 2007 dated 15.11.2007 convicting the appellant for the offences punishable under Sections 366, 376 and 392 r/w 397 IPC and sentenced him to undergo 7 years rigorous imprisonment and imposed a fine of Rs.1,500/- in default to undergo 6 months rigorous imprisonment for the each offences.

2.The brief facts leading to this case are as follows:-

(i)P.W.1 is the prosecutrix. The prosecutrix got married with P.W.6, Ganasekaran. P.W.6 is residing at Chennai and he used to visit his wife once in a month. P.W.1 is also used to visit her husband. Therefore, she went to chennai on 09.05.2006 to visit her husband and returned from Chennai on 13.05.2006. She boarded bus at Chennai to Thuraiyur on 13.05.2006 at 06.30 a.m.. She came to Thuraiyur at 2.30 p.m., Thereafter, she boarded another bus to her Village. The accused also came in the same bus. Both have got down



in Gandhi Nagar Bus Stand.

(ii) When the prosecutrix was walking before the accused at about 10 feet distance, the accused hold her hair and dragged her to nearby bushes. P.W.1, made hue and cry. However, no one was there. The accused threatened her, if she makes such sound, that he will kill her. Since the villagers already told her that the accused had previously involved in many other criminal cases, she did not make any hue and cry. Thereafter, the accused undressed P.W.1 and forcibly raped her. P.W.1's purse was also fell down at the relevant point of time and the accused took away a sum of Rs.500/-. While running with that money, he fell down and suffered with head injury. Thereafter, the accused ran away with underwear. P.W.4., also saw the accused running with underwear and when the accused requested his cycle, the same was refused by P.W.4, the accused beat P.W.4 and got lift in the motor cycle, which was passing through the road at the relevant point of time. P.W.2-father-in-law of P.W.1 came to the place of occurrence, while hearing the sound of his daughter-in-law at the time of going to the tea shop, he found that P.W.1 was lying undressed. The accused ran away from the place of occurrence. P.W.5 has also seen the accused running with underwear.

(iii) P.W.6, on hearing the alleged occurrence, rushed to the village on 14.05.2006. Thereafter, they gave a complaint [Ex.P1]. P.W.10-the Inspector of Police received Ex.P1 and registered a case in Crime No.263 of 2006 for the offence punishable under Sections 366, 376 and 392 r/w 397 IPC and on the same day, went to the place of occurrence and prepared observation mahazar [Ex.P9] and drew a rough Sketch [Ex.P8] and also seized the dresses of the accused [Ex.P10] and arrested the accused in the presence of P.W.7 and one Alagumuthu, and recorded the confession of the accused [Ex.P2]. Thereafter, he seized the sum of Rs.500/- and also he seized the knife [M.O.8] and remanded the accused.

(iv) Thereafter, he referred P.W.1 to medical treatment. P.W.8- Professor of Annal Kandiadikal Government Hospital, Trichy, examined P.W.1 and gave a medical report [Ex.P5]. In that report, it is stated that P.W.1 is married, she has two children and there is no external injuries on her body. P.W.9-the Medical Officer, who conducted potency test on the accused, had issued a report [Ex.P6]. P.W.11-Inspector of Police, in continuation of further investigation, filed a final report based on the evidences and materials.

(v) D.W.1 in his evidence stated that P.W.1 and the accused were used to meet frequently. On 13.05.2006, at about 03.30 p.m., D.W.2 and two others including P.W.2, were together in a tea shop. At that time, one person came and told P.W.2 that the accused and her daughter-in-law were together in the bus stand. Accordingly, all of them proceeded to the bus stand. On seeing the accused with P.W.1, P.W.2, 4 and 5 beat the accused and caused head injury. D.W.1 and D.W.2 took the accused to the police station and after



giving complaint, took the accused to the hospital. Thereafter, the accused was in the hospital for taking treatment.

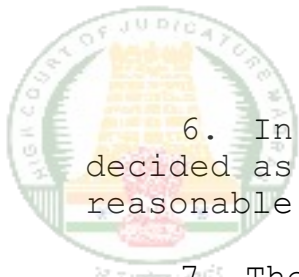
(vi) On the next day, they came to know that on the complaint given by P.W.1, the accused was taken from the hospital to the police station. D.W.3-Medical Officer attached to the Thuraiyur Government Hospital stated that on 13.05.2006, at about 08.30 p.m., the accused came for treatment with injuries stating that he was attacked by three people at about 07.00 p.m., on the same day and issued Ex.D1. He has 3*1/2 *1/2 cm laceration injury on the left side of the front head, 5*1/2*1/2 laceration injury on the right side of the front head, six cut injuries on his right hand and he had admitted in the hospital. On the next day, the accused was taken to the police station.

(vii) Before the Trial Court, on the side of the prosecution, P.Ws.1 to 11 were examined, Exs.P1 to 15 and M.O.1 to M.O.8 were marked. On the side of the appellant, D.Ws.1 to 3 were examined and Ex.Ds.1 and 2 were marked. Based on the evidences and materials, the Trial Court found the accused guilty as stated supra and convicted him. Aggrieved over the same, the present Criminal Appeal came to be filed.

3. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

4. The learned counsel for the appellant would submit that the entire case is based on the complaint given by P.W.1, P.W.2 and their family members in order to avoid possible police action against them on the complaint given by the accused for causing head injury on the accused. The accused was arrested from the hospital, while he was taking treatment. The alleged theory of the rape, is nothing but a false one, as the alleged occurrence is said to have taken place on 13.05.2006 in the bus stand. The complaint has been given in the next day, after the accused lodged the complaint against P.Ws.2, 4 and 5. It is further submitted that the prosecution has not explained the delay in despatching FIR to the Court. This fact clearly indicates that FIR is registered on deliberation to avoid the possible police action against them. The alleged occurrence was taken place in a thorny bushes. Medical evidence shows that there was no injury on the body of the P.W.1. The trial Court, has not appreciated the evidence of defence side and ordered conviction of the accused.

5. The learned Public Prosecutor submitted that the victim has clearly spoken about the manner by which she was ravished. Mere delay in despatching FIR to the Court cannot be a ground to dispute the entire prosecution. He further submitted that the accused was charged for the offence punishable under Sections 366, 376 and 392 r/w 397 IPC. The offences are heinous in nature. Mere delay in FIR alone is not enough to disbelieve the prosecution version.



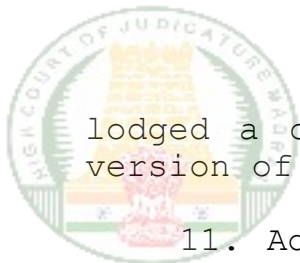
6. In the light of the above submissions, now it has to be decided as to whether the prosecution has proved the case beyond all reasonable doubts.

7. The victim in this case is a married women, aged about more than 22 years at the relevant point of time and has two children. The evidence of the victim clearly shows that her husband is residing at Chennai and doing business of selling tube lights. On the date of occurrence i.e., 13.05.2006, she boarded bus at Chennai to her village and reached Thuraiyur at about 02.30 p.m. Thereafter, she boarded another bus to go to her village. The accused also boarded the same bus. Both of them got down at Gandhi Nagar bus stand. At that time, the accused intercepted and dragged her in nearby bushes and undressed her and forcibly committed rape and took away a sum of Rs.500/- from the victim's purse. P.W.2-father-in-law of P.W.1 supported the evidence of P.W.1 to the effect that while he was coming to tea shop, he saw the accused running from the place of occurrence with underwear with blood injury. Therefore, they informed the same to P.W.6-husband of P.W.1. Thereafter a complaint [Ex.P1] was given to the Inspector of Police.

8. When the evidence of the prosecutrix inspires confidence, the same itself is sufficient to base a conviction for the offence of rape on the ground that no women will come forward with this type of false allegations against anybody for any other previous motive. On 14.05.2006, an FIR has been registered but, reached to the Court only on 21.05.2006. The delay in despatching the FIR by the Investigation Officer has not been explained.

9. It is also not in dispute that the accused sustained head injury on the previous date. D.W.3, in his evidence, has clearly spoken that the accused had laceration injuries and cut injuries in his head and hand. The accused was treated as in patient at the relevant point of time. The evidence of D.Ws.1 and 3 indicates that the accused got arrested in hospital while he was taking treatment.

10. It is the case of the accused that when the victim and the accused were speaking together in the bus stand, P.W.2, 4 and 5 beat the accused and thereby he sustained injury. Immediately, he went to the police station and lodged a complaint, thereafter he was referred to hospital and got treated. Only to avoid any action against them by the police officials, they lodged this false complaint against the accused. The evidence of D.Ws.1 to 3 has substantiated his version. P.W.5 was examined by the prosecution. In his cross examination, he has clearly spoken about the case of the accused. P.W.5 is the brother of P.W.3. He stated that on 13.05.2006, P.W.2, 3 and 5 were together at tea shop. On hearing the news that the accused and the daughter-in-law of P.W.2 are speaking together at bus stand, P.W.2, being father-in-law of P.W.1, P.Ws.4 and 5 also rushed there and questioned the accused and then P.W.2 attacked the accused and thereby caused injuries to the accused. P.W.2 has given complaint only after the accused has



lodged a complaint. P.Ws.1 and 2 evidence is also supported the version of P.W.4.

11. Admittedly, the accused sustained injury as per the report of D.W.3. Further the evidence of the medical officer clearly shows that the evidence of P.W.2 that his daughter-in-law was lying down in the place of occurrence in undressed manner is also magnified version. Similarly, the Inspector of Police, though came to the place of occurrence, he did not make any enquiry as to how the accused sustained injury. The evidence of P.W.1 suffers from serious infirmity about the force used by the accused on her. As per P.W.1's version that she was dragged in to the thorny bushes, and forcible raped. However, no external injury was found in the body of P.W.1 and the medical officer report clearly shows that she has not suffered any injury, if really she was subjected to forcible rape in a location which is of fully of thorns, there bound to be external injuries on her, since according to P.W.1, she was undressed and raped.

12. Admittedly, the alleged occurrence place is near the bus stand. There would be more movement of people. If really such occurrence took place in afternoon, the accused would not have been spared by the people. That apart, the alleged travel returning from Chennai by P.W.1 is also not established. The tickets to show that she has travelled on the date of occurrence are not seized by the prosecution. The inconsistency evidence of P.W.1 is also not supported by the medical evidence. The delay in filing FIR and delay in despatching FIR to the Court makes the entire prosecution improbable. All the 161 statements and other documents also reached the Court belatedly and the said delay also remains unexplained. The evidence of P.W.1 itself does not inspire any confidence of this Court. Hence, I am of the view that the accused person is entitled to get benefit of acquittal.

13. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant by Judgment dated 15.11.2007, made in S.C.No.77 of 2007, on the file of the learned Additional Sessions Judge, (Mahila Court), Tiruchirapalli, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)



To

1.The Additional Sessions Judge (Mahila court),
Tiruchirapalli.

2.-do-Thro-The Principal Sessions Judge, Tiruchirappali.

3.The Judicial Magistrate,
Thuraiyur.

4.-do-Thro-The Chief Judicial Magistrate, Trichy.

5.The Inspector of Police,
Thuraiyur Police Station,
Trichy District.

6.The Superintendent,
Central Prison,
Trichy.

7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section(Record)
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1CC TO MR.T.SENTHIL KUMRAN, ADVOCATE IN SR.NO.77844.

TA

DS SKN SAR-3 03.10.2018 6P/11C

Judgment made in
CRL.A(MD)No.667 of 2007
09.08.2018