

**BAIL SLIP**

The appellant/Sole Accused namely Venkatesan S/o.Chinnathambi was released on bail as per the order of this Court dated 23.09.2008 made in MP(MD)No.1 of 2008 in Crl.Appeal (MD)No.429 of 2008.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 25.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRIMINAL APPEAL (MD) .No.429 of 2008

Venkatesan

.. Appellant / Sole Accused

Vs.

State represented by,
The Inspector of Police,
B-13, K.Pudur Police Station,
Madurai,
Madurai District.

.. Respondent / Complainant

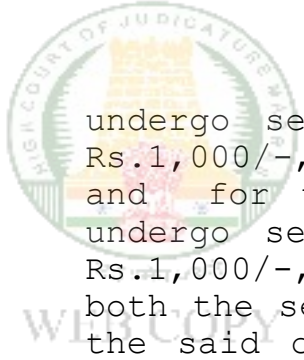
PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment passed by the learned Sessions Judge, Magalir Neethimandram, Mahila Court, Madurai, made in S.C.No.512 of 2006, dated 08.08.2008 convicting the appellant for the offence under Section 366 IPC and sentencing him to undergo 7 years RI and imposed a fine of Rs.1,000/- in default, to undergo one year RI and for the offence under Section 376 IPC and sentencing him to undergo 7 years RI and also imposed a fine of Rs.1,000/-, in default to undergo 7 years RI and both the sentences have ordered to be run concurrently.

For Appellant : Mr. A.R.L.Sundaresan
Senior Counsel
for Mr.J.Anandakumar

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in S.C.No.512 of 2006, on the file of the learned Sessions Judge, Magalir Neethimandram, Mahila Court, Madurai. He stood charged for the offences punishable under Sections 366 and 376 I.P.C. By Judgment dated 08.08.2008, he was convicted under Sections 366 and 376 I.P.C. and sentenced to



undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one year rigorous imprisonment and for the offence under Section 376 IPC, he was sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment and both the sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

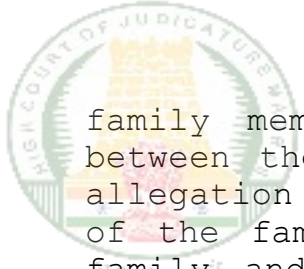
PW1 is the prosecutrix. The accused and PW1 are close relatives. PW2 is the mother of PW1. PW3 is the father of PW1. PW4 is the sister of PW1. PW5 is the neighbour of PW1. PW6 is the doctor who examined the victim. PW7 is the doctor who examined the accused.

2.1. PW1 was studying twelfth standard at the relevant point of time. On 23.11.2004, she was in her grandmother's house. At about 1.30 a.m., the accused came there and caught her and took her to his house terrace and forcibly committed rape. On hearing the sound of PW1, PW2 and other family members rushed there and PW2 infact thrown the brick on the accused. Thereafter, the accused fled away from the place of occurrence, in respect of which Ex.P1-FIR was registered by the police. PW9, Sub Inspector of Police, received Ex.P1 and registered a crime in Crime No.1901 of 2004 under Ex.P8 and forwarded the same to the Court and sent a copy to the Inspector of Police. Thereafter, P.W.10-the Inspector of Police, took up the investigation and examined the witnesses and PW1 and also sent PW1 to medical examination. PW6-medical officer examined the victim-PW1 on 25.11.2004 and issued Ex.P3 and opined that no external injuries found on PW1. PW7-medical officer, who examined the accused and issued Ex.P.5, opined that there is nothing to suggest about his impotent. PW11-the Deputy Superintendent of Police, in continuation of the investigation, examined all the witnesses and laid a final report.

3. Based on the above evidence and materials, the learned trial Judge found the accused guilty for the offences under Sections 366 and 367 IPC and convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Aggrieved over the same, the present appeal has been filed.

4. I have heard the learned Senior Counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

5. The main contention of the learned Senior Counsel for the appellant is that the allegation is nothing but motivated, because of the family dispute existing between two families. The accused and PW1 are close relatives and there were some dispute between the family. However, the accused and PW1 are moving very friendly. When both of them are found together in the affairs, the



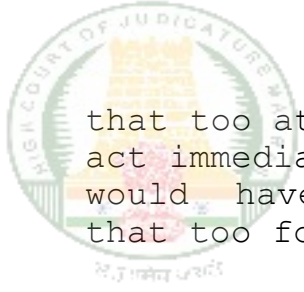
family members taking advantage of the dispute already existed between the two families have falsely implicated the accused. The allegation of rape is highly improbable. PW1 also acted to the tune of the family members. She has succumbed to the pressure of the family and gave evidence against him. Now, PW1 was married and settled in a marital life. PW1 is also present in the Court today. On enquiry, PW1 is also stated before me that only there was love affair between the accused and herself. She further stated that due to the family pressure, she had to take such extreme step. This Court is conscious of the fact that such statement of the witnesses at later stage cannot be given much importance. Resiling from the earlier statement or earlier evidence, may be due to various reasons, like winning over the witnesses or some of the extraneous consideration. But such statement of PW1 before this Court is not relevant at all for deciding the appeal.

6. Be that as it may, it is the contention of the learned counsel for the appellant that the delay in filing the FIR probablize the defence theory that the case has been motivated. Infact in a family dispute, the accused was beaten up and there was earlier complaint filed and FIR also filed against the family members of PW1, which has been provoked PW1 and her family members to take extreme steps to implicate the appellant/accused in this crime. He further submitted that absolutely, there is no evidence even to prove the alleged kidnap as well as the rape. Hence, prayed for acquittal.

7. The learned Additional Public Prosecutor appearing for the respondent submitted that PW1 has stated about the alleged rape in her evidence. However, now she has taken a contrary view before this Court for some other reasons. Now, the contention of the learned Additional Public Prosecutor is that before the trial Court PW1 has clearly spoken about the alleged act of the accused. Hence, no interference is required.

8. In the light of the above submissions, now it has to be found whether the prosecution proved the case beyond doubt. It is not in dispute that PW1 and the accused are the close relatives. Similarly, their houses were situated in the close vicinity is also not in dispute.

9. It is a specific case of the prosecutrix, namely, PW1 that on 23.11.2004, she was sleeping in her grandmother's house in K.Pudur. During that time, at about 1.30 a.m., the accused gagging her mouth with cloth and forcibly took her to his house terrace through steep steps which are 22 in numbers. Thereafter, forcibly committed rape. At that time PWs.2 and 3 came there and beaten the accused. In the entire evidence, PW1 has maintained that she was forcibly taken to his house by gagging her and ravished forcibly. It is curious to note that PW1 was staying in her grandmother's house and at the relevant point of time, she was fast asleep. If a matured girl, i.e, more than 20 years old, is forcibly taken from her house



that too at the mid-night, the normal conduct of a human would be to act immediately. The reaction could be otherwise, the family members would have stopped the accused from taking the victim to his house that too forcibly by gagging her mouth.

10. Therefore, the very theory of the prosecution of alleged abduction and taking PW1 and making her to claim steep steps at the mid-night forcibly is highly improbable. Further, from the evidence of PW1, she was forcibly ravished despite resistance. But her evidence is highly improbable and infact doubtful for the following reasons; if PW1 was ravished forcibly that too in the terrace at the hard surface, despite her resistance, it is a common knowledge that there must be at least some abrasions on her body. But medical officer's evidence clearly ruled out any forcible violence on the body of PW1. It is further to be noted that according to PW1, she was raped forcibly. But medical evidence totally rules out any such rape. Of course, the medical evidence need not be given much importance in cases like this nature, at the same time to act on the testimony of PW1, such testimony must inspire the confidence of the Court and should not suffer from any infirmities or doubt and also artificiality. When the evidence of the so called prosecutrix-PW1 is with improbabilities and artificiality, then corroboration is absolutely necessary.

11. PWs.2 and 3- the parents of PW1 though in one voice supported the version of PW1 that the accused forcibly raped their daughter, but no semblance of physical violence was found by the medical officer. This cannot be doubted. It is further to be noted that no other relatives, who were residing the same vicinity have been examined by the prosecution, except PW1's family members. PW5- the neighbour has also not supported the version of the prosecution. It is also to note that as per the version of PW9, the accused was beaten up and infact he has lodged FIR on 24.11.2004 at 7.30 a.m., itself, wherein he has named PWs.2,3,4 and others. Only after such complaint being lodged, Ex.P1-FIR came to be filed after three hours delay. These facts also clearly indicate the possible deliberation before lodging Ex.P1. That cannot be ruled out. At any event, the evidence of PW1-prosecutrix having too much of artificiality that is highly improbable. That may be the reason, PW1 realised the artificiality in her evidence has come before this Court today. That also cannot be ruled out. At any event considering the entirety of the evidences, I am of the view that the alleged occurrence as spoken by PWs.1 to 3 is highly improbable and suffered from serious infirmities and artificiality and medical evidence also totally ruled out the allegations. Hence, the entire prosecution cannot be relied upon. Therefore, the accused is definitely entitled the benefit of doubt.

12. In the result, this Criminal Appeal is allowed. The conviction and sentence dated 08.08.2008, passed in S.C.No.512 of 2006 by the learned Sessions Judge, Magalir Neethimandram, Mahila Court, Madurai is set aside. The appellant/accused is acquitted.



Fine amount, if any, paid by him, shall be refunded forthwith. Bail bond, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar(CS-I)

WEB COPY

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Sessions Judge,
Magalir Neethimandram,
Mahila Court,
Madurai,
2. The Inspector of Police,
B-13, K.Pudur Police Station
Madurai, Madurai District.
3. The Superintendent,
Central Prison, Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court

+1cc to J.Anandakumar, Advocate Sr.No.92389

PJL

MK/SKN/SAR3/04.12.2018/5P/8C

Cr1.A. (MD) .No.429 of 2008
25.10.2018