

Bail Slip

The Petitioner/Appellant/Accused namely Muthu S/o Paramasivam was released on bail on 28/10/2008 made in CrI.M.P.1/2008 in I.A.No.759/2008 as per order of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.A.No.759 of 2008

Muthu ... Appellant/Accused 1

Vs.

State by
Inspector of Police,
Kelambakkam Police Station,
Kelambakkam,
Kancheepuram District. ... Respondent/Complainant

Prayer: Appeal filed under Section 374 (2) of Cr.P.C. against the judgment of the learned Mahila Judge, Chengalpattu, in S.C.No.310 of 2005, dated 13.08.2008.

For Appellant : Mr.M.Vijayakumar

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

JUDGMENT

The 1st accused in S.C.No.310 of 2005 on the file of the learned Judge, Mahila Court, Chengalpattu, is the appellant herein.

2.The facts in nutshell leading to prosecution of the appellant is as follows:

The victim girl was studying in 6th standard in the year 2001 at Panchayat Union Middle School, at Padur. On 28.02.2001, about 8 p.m., the victim girl after returning from school went to provision store to purchase goods and when she was returning home near the ration shop, the appellant/A1 waylaid her and wrongfully restrained and told her that her sister was standing

nearby and when the victim girl turned to see, the accused pulled and lifted her and took her to nearby Alangariamman Koil. Though she cried and raised alarm, she could not over come the accused. Thereafter, the accused kissed in her lips and cheek and thereafter, pressed her breast and committed rape. Thereafter, she rescued herself and restored to her home. On the way, she saw the 2nd accused near the ration shop and she narrated the incident to the second accused, who threatened her not to tell anybody about the incident and if she reveals, he will beat her and kill her. Thereafter, she ran away to her house and narrated the incident to her mother and to the witnesses Kathir and P.W.3 Elumalai, who are the uncles of the victim girl. They took the victim to the Kelambakkam Police Station, where she gave a statement, which is marked as Ex.P.1.

3. At the Kelambakkam Police Station, One Nagoor Meeran, Head Constable 948, received the complaint and registered a case in Crime No.88 of 2001 for the offences under Sections 341 and 354 of IPC. Thereafter, he went to the scene of occurrence at about 22.45 hours, prepared observation mahazar(Ex.P.4) and drew rough sketch(Ex.P.8) and registered the F.I.R.(Ex.P.7). Thereafter, the head constable recorded the statement of one Bagyalakshmi(P.W.1), Devi(P.W.2), Elumalai(P.W.3), Kathirvel and Chinnakutti(P.W.5) and arrested A1 on 01.03.2001 in the early hours at 5.00 a.m. and remanded him to judicial custody. Thereafter, investigation was handed over to P.W.8, who took further investigation and went to Kasthuri Bai Gandhi Hospital at Chennai and examined the victim girl, who was admitted there as an inpatient and recorded her statement. Thereafter, P.W.8 altered the offence under Sections 341, 376 and 506(ii) of IPC and such alteration report is marked at Ex.P.9. Thereafter, he again examined P.Ws.1,2,3 and 5 and witnesses Baskar and Thamizharasu and recorded their statements. Then the victim girl was sent for medical examination and forensic science examination. Thereafter, on 06.03.2001, P.W.8 arrested A2 at about 5.30 p.m and remanded him to judicial custody and again, he arrested the first accused on 17.05.2001 and sent him for potency test to Dr.Parthasarathi (P.W.4), who examined A1 for his potency and issued Ex.P.2 and thereafter, handed over the investigation to P.W.11. P.W.11 took further investigation and laid Final Report.

4. After following due procedure, the case was committed to the Court of Sessions, Chengalpattu, by the learned Judicial Magistrate No.1, Chengalpattu and the same was taken on file by the learned Principal District and Sessions Judge, Chengalpattu and transferred to the file of Mahila Court, Chengalpattu.

5.The learned Sessions Judge, Mahila Court, Chengalpattu, framed charges against A1 for the offence punishable under Section 376 of IPC and the same was read over and explained to the accused in Tamil. The accused pleaded not guilty. Thereafter, trial was proceeded against the accused.

6.The prosecution examined 11 witnesses as P.W.1 to P.W.11 and marked exhibits Ex.P1 to Ex.P11. However, no oral evidence was let in and no exhibits were marked on the side of the defence.

7.After trial, the Trial Court acquitted the appellant from the offence under Section 376 of IPC and convicted and sentenced him to undergo 2 years rigorous imprisonment and to pay a fine of Rs.3000/- in default, to undergo 4 months simple imprisonment for the offence under Section 354 of IPC. Challenging the above said conviction and sentence, A1/appellant have come up with this appeal.

8.Heard the learned counsel for the appellant and the learned Government Advocate (Crl.side) for the respondent Police.

9.The learned counsel appearing for the appellant would submit that there is no material whatsoever available to prove the charge under Section 376 of IPC and the trial Court has rightly acquitted the appellant from the charge under Section 376 of IPC, however, convicted the appellant under Section 356 of IPC, is unsustainable one.

10.The learned counsel appearing for the appellant would further submit that admittedly there was a dispute between the victim's paternal uncle and the relative of the appellant. The paternal uncle of the victim girl contested in an election during the year 2001, in which the appellant's relative succeeded in the election, thereby, there was enmity between these two groups. In order to wreak vengeance, a false case was foisted against the accused. Though the trial Court acquitted A1 and A2 under Section 376 IPC, however, convicted the appellant/A1 under Section 354 IPC, which is unsustainable one. He further submitted that in fact, the evidence of P.W.1 is contradictory to exhibit Ex.P.1-Complaint and also submitted that for outraging the modesty of a woman, a person has to use criminal force. In the present case, no evidence is available to show that the accused used force to assault the victim girl except the victim girl's deposition. Hence, he prays for acquittal of the accused.

11.Per contra, the learned Government Advocate(Crl.side) would submit that P.W.1 is the victim girl and P.W.2 is the mother of the victim girl and P.W.3 is the paternal uncle of the victim girl. P.W.1 in her deposition clearly deposed that she

was dragged on by A1 and committed rape on her. Though the trial court erroneously acquitted the accused under Section 376 I.P.C., however, convicted the accused based on the compliant as well as evidence under Section 354 of IPC. However, no appeal was preferred against the order of acquittal under Section 376 I.P.C., and the said conviction was passed based on Ex.P.21 - Medical Certificate. The evidence of P.W.1 and P.W.7 clearly corroborates each other and medical certificate issued by P.W.7 states that the victim girl has been raped. Considering all the factual materials and evidence, the trial Court has rightly convicted the appellant and hence, the judgment of the trial Court need not be interfered with.

12.I have carefully considered the rival submissions and perused the records and documents submitted by the prosecution.

13.According to the prosecution, P.W.1 after returning from school went to provision store to purchase goods and when she was returning to home near the ration shop, the appellant/A1 waylaid her and wrongfully restrained and told her that her sister was standing nearby and when the victim girl turned to see, the accused pulled and lifted her and took her to nearby Alangariamman Koil. Though she cried and raised alarm, no one rescued her from the hands of the appellant. However, she managed to escape from the hands of A1 and ran towards her home. On the way, she saw A2, who is the brother of the appellant/A1 and narrated the incident to him. However, A2 threatened her not to reveal the incident to anybody. On the basis of the evidence of P.W.1, the trial Court acquitted A2, but convicted A1.

14.Due to the said occurrence, the victim girl had sustained injuries, which is evident from the evidence of P.W.4 and thereafter, she was referred for further medical examination and the victim girl was examined and report was submitted by P.W.7. In her evidence, P.W.7 had deposed that she was working as a Gynaecologist in Kasthuri Bai Gandhi Hospital, Chennai and about 1.45 p.m., the prosecution has produced the victim girl for medical examination. On physical examination, she found that there was laceration in the left breast and small blood injury found in the vagina and gave a certificate to that effect, which is marked as Ex.P.6. However, P.W.1, in her evidence, has stated that the appellant/A1 has pressed her breast and also her Vagina. But, the appellant/A1 did not insert his private part in her Vagina and further, she deposed that he pushed her on the floor, however, she has not sustained any injury on the date of occurrence. Therefore, the said evidence is contrary to the evidence of P.W.7 Doctor. The incident was happened on 28.02.2001. However, P.W.7 - Doctor examined the victim girl on 02.03.2001, i.e., after two days from the date of incident and

she deposed that the victim girl sustained lacerated injury in her breast and one simple injury in her Vagina. Both the evidences are contrary in nature. Initially, P.W.1 - victim girl did not disclose about the injury sustained by her and after two days from the date of incident, she stated the above said injuries. When P.W.1 victim girl sustained injury in her chest and her private part and thereafter, P.W.7 Doctor examined the victim girl on 02.03.2001 i.e., after two days from the date of incident, noticed the above said injuries, the prosecution miserably failed when the victim girl has sustained injury. In view of the above contradiction, the trial Court extended the benefit of doubt in favour of the accused.

15.Further, perusal of the records shows that P.W.1's evidence corroborates with the evidence of P.W.3, the paternal uncle of the P.W.1. P.W.3 clearly deposed in his statement that the victim girl came running crying to the house and when he and his sister chased the victim girl in order to know the reason for her crying, P.W.2, mother of P.W.1 enquired about the reason for crying and P.W.1 narrated the entire incident to her mother. Thereafter, she was taken to the respondent Police Station and a case was registered against the accused persons.

16.Though it is the case of the prosecution that the appellant/A1 waylaid P.W.1, who was a minor girl, dragged her to a nearby temple and forced her and committed rape on her, no incriminating articles were seized by the respondent police and stated as destroyed by the prosecution witnesses. Therefore, the Court below has held that the prosecution has failed to prove the offences alleged against the appellant/A1 under Section 376 IPC. But, since the evidence adduced by P.W.1 clearly proved that the appellant/A1 had committed the offence under Section 354 IPC, the trial Court rightly convicted the appellant/first accused only under Section 354 of IPC and sentenced him to undergo two years rigorous imprisonment and also imposed a fine of Rs.3,000/-, in default, to undergo four months simple imprisonment. The said conviction and sentence need not be interfered with, without any basis and I have no hesitation to say, the prosecution has proved the case beyond any reasonable doubt.

17.After arguments of both sides, when the court expressed its view to dismiss the appeal and about to pronounce the judgment, the learned counsel for the appellant filed an affidavit of the appellant, stating that the appellant and the victim family reconciled their differences arose out of the said criminal case and hence he seeks to compound the offence. This Court is not convinced with such an affidavit.

18.In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed on the Appellant, vide judgment dated 13.08.2008 in S.C.No.310 of 2005, by the learned Mahila Judge, Chengalpattu, is confirmed. Since the appellant is on bail pending appeal, the Trial Court as well as the Investigation Officer shall take necessary and expeditious steps to secure the custody of the appellant/A1 to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rm
To

- 1.The Judicial Magistrate No.1,
Chengalpattu.
- 2.The Chief Judicial Magistrate,
Chengalpattu.
- 3.The Sessions Judge,
Mahila Court,
Chengalpattu.
- 4.The Public Prosecutor,
High Court,
Madras.
- 5.The Inspector of Police,
Kelambakkam Police Station,
Kelambakkam,
Kancheepuram District.
- 6.The Section Officer,
Criminal Section, High Court,
Madras-104.

+1cc to Mr.M.Vijayakumar, Advocate sr.5595

CrI.A.No.759 of 2008

sr[co]
srg 23/03/2019