

Bail Slip

The Appellant/Accused, S/o.Emperumal, aged about 35 years, was released on bail as per order of this Court dated 29/04/2010 in Crl.MP.No. 1 of 2010 in Crl.A.No.292 of 2010 by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.292 of 2010

Arul

..Appellant/Accused

Vs

State by Inspector of Police
All Women Police Station, Jeyamkondam
Ariyalur District.

..Respondent

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 21.04.2010, made in SC.No.72 of 2009, by the Sessions Judge, Mahila Court, Perambalur.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.K.Prabakar, APP

JUDGMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 21.04.2010, made in SC.No.72 of 2009, by the Sessions Judge, Mahila Court, Perambalur, convicting and sentencing the appellant/ accused, for the offence under Section 376 of IPC, to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.2000/-, in default, to undergo three months Rigorous Imprisonment.

2. The case of the Prosecution has arisen, on the basis of the complaint, Ex.P1, dated 09.10.2008, given by the victim, Prosecutrix, PW.1, alleging that both the Prosecutrix and the Appellant/ accused are the residents of Pudukudi Village,

Ariyalur and that they were doing mason/coolie work in a construction site at Pudukudi and thereby, they got acquainted with each other. On 24.05.2008, at about 4.00 p.m., when PW.1 was alone in her house, the Appellant/ accused came there and taking advantage of her loneliness and under the false promise to marry her, forcibly raped PW.1 against her will and subsequently, on demand, refused to marry her. Hence, the Appellant/ accused was charge sheeted for the offence under Section 376 of IPC.

3. The case was taken on file in SC.No.72/2009 by the Sessions Judge, Mahila Court, Perambalur and necessary charge was framed. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution examined PW.1 to PW.12 and marked Exs.P1 to P6.

4. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case.

5. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the Appellant/ accused guilty and awarded punishment, as referred above, which is challenged in this Criminal Appeal.

6. This court heard the submissions of the learned counsel on either side.

7. The learned counsel for the Appellant/ accused, contending that in a case of rape, though it is sufficient to believe the statement and the evidence of the solitary witness, Prosecutrix, the evidence of the Prosecutrix should inspire confidence and in the event of the evidence of the Prosecutrix not inspiring confidence, it is not safe to convict the accused. In this case, there are lot of contradictions and embellishments, as narrated below:-

a. When the entire materials on record and the evidence of PW.1, Prosecutrix does not inspire confidence, the Trial Court erred and is not justified, in convicting the Appellant/ accused for the offence under Section 376 of IPC, based on the evidence of the solitary witness, Prosecutrix.

b. As per PW.1/ Prosecutrix, two complaints were said to have been given by her. According to the Prosecutrix, the first and earliest complaint was given after seven days of the occurrence, but there is no material found for having preferred such a complaint. Even with regard to the complaint, Ex.P1, it was lodged after four months from the date of occurrence and the First Information Report was also registered belatedly. Thus, there was an inordinate delay in preferring even the earliest complaint and Ex.P1, which was not at all explained either by the Prosecutrix or by the Prosecution, thereby making the case of the Prosecution, doubtful.

c. The Prosecutrix was aged 21 years at the time of occurrence and the medical evidence let in by the Prosecution also does not support the case of the Prosecution. The alleged occurrence had taken place with the consent of the Prosecutrix only and hence, the offence under Section 376 of IPC is not attracted.

d. There was a love affair between the Appellant / accused and the Prosecutrix and since because the Appellant refused to marry the Prosecutrix, the case had been foisted against him.

8. The learned counsel for the Appellant would ultimately contend that the Prosecution has not proved its case beyond all reasonable doubts, by letting in cogent and convincing evidence. Taking into consideration the overall evidence of the witnesses and the attending circumstances, particularly, the evidence of the Prosecutrix, PW.1, which does not inspire confidence, the impugned judgement of conviction and sentence is not sustainable and therefore, the Appellant is entitled for acquittal. In support of his contentions, he would rely on the decisions of the Honourable Supreme Court reported in 2019 SCC Online SC 180 (Parkash Chand Vs. State of Himachal Pradesh), CDJ 2018 SC 861 (Sham Singh Vs. The State of Haryana) and CDJ 2018 SC 1305 (State of MP Vs. Rajaram @ Raja).

9. On the other hand, the learned Additional Public Prosecutor for the Respondent, while supporting the impugned judgement of conviction and sentence, would submit that it is a case of rape, which is a serious offence and that the evidence of the Prosecutrix, PW.1 itself is sufficient and cogent and inspires confidence to base conviction under Section 376 of IPC and that the delay in lodging the complaint, by PW.1 had occurred, because PW.1 and her relatives approached the Appellant for marrying her and the Appellant promised to marry her after three months and even thereafter, he refused to marry her and thus, the delay had occurred and that the Prosecution has proved its case by adducing clear and cogent evidence and that there are no infirmities or discrepancies or inconsistencies in the evidence adduced by the Prosecution and that the case of the Prosecution is also corroborated by the medical evidence. He would also submit that since because the medical evidence does not support the case of rape, the evidence of the Prosecutrix cannot be doubted and that considering the evidence, both oral and documentary, in a proper perspective, the Trial Court had rightly convicted and sentenced the Appellant/accused, by the impugned judgement, which warrants no interference by this Court.

10. I have given my careful and anxious consideration to the rival contentions put forward by learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction, including the relevant provisions of Law and authorities of various Courts.

11. In the case on hand, the points to be decided are as to (i) whether the evidence of the Prosecutrix, PW.1 inspires confidence to base conviction and the other evidence as well, (ii) whether the Prosecution has proved its case beyond all reasonable doubts, by cogent and convincing evidence and (iii) whether the Trial Court is right and justified in convicting the Appellant/ accused.

12. A perusal of the entire records shows that the case of the Prosecution mainly rests on the testimony of the Prosecutrix, PW.1.

13. The first and foremost infirmity pointed out by the learned counsel for the Appellant is with regard to the delay in preferring the complaint, Ex.P1 and in registering the same by the Respondent Police. It is seen from the materials on record that there was an inordinate delay of four months in lodging the complaint, Ex.P1, by the Prosecutrix, PW.1, inasmuch as though the occurrence took place on 24.05.2008, the complaint, Ex.P1 was made by PW.1, to the Respondent only on 11.09.2008, after four months from the date of occurrence and even the case was registered on 9.10.2008, after one month from the date of lodging the complaint, Ex.P1. Thus, there was an inordinate delay in preferring the complaint, Ex.P1 as well as in registering the First Information Report by the Respondent Police. For such an inordinate delay in preferring the complaint, Ex.P1 and in registering the case, there has been no valid and satisfactory explanation, forthcoming from the Prosecution, thereby making the case of the Prosecution suspicious.

14. Even with regard to the earliest complaint alleged to have been given by the Prosecutrix, even according to the evidence of the Prosecutrix, it was given after a delay of seven days from the date of occurrence. But, this Court finds no material to show the earliest complaint having been filed by the Prosecutrix. The Respondent Police has also denied that an earlier complaint was given by the Prosecutrix.

15. Regarding the delay, the case of the Prosecutrix is that she and her relatives went to the house of the Appellant/ accused, seeking the Appellant to marry her and that they were threatened by the Appellant/ accused as well as his relatives and thereafter, after seven days from the date of occurrence, a complaint was made to the Respondent and in the enquiry conducted by the Respondent, the Appellant/ accused was stated to have assured to marry the Prosecutrix after three months and thereafter, once again when the Appellant/ accused was approached, he refused to marry her and only after that, the complaint, Ex.P1 was given. But, this Court finds no material to show as to what transpired between the period of four months from the date of occurrence to the date of the complaint, Ex.P1. As stated above, the delay in giving the complaint, Ex.P1 to the Respondent Police has not been properly and reasonably

explained by the Prosecutrix or by the Prosecution. Though it has been stated by the Prosecutrix that the earlier complaint was given by her to the Respondent Police, it was denied by the Respondent that such a complaint was given.

16. In a case of rape, though the delay, per se, is not a mitigating circumstance for the accused and cannot be used as a ritualistic formula for discarding the case of the Prosecution, the Court has to see whether such a delay is explained satisfactorily or not. In a case, if the Prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment or exaggeration in the version of the Prosecution, on account of such delay, it is a relevant factor to be taken into account. On the other hand, satisfactory explanation of the delay is enough to reject the plea of false implication or vulnerability of the Prosecution case. Such a proposition was laid by the Honourable Supreme Court in its decision reported in 2003 8 SCC 590 (Tulshidas Kanolkar Vs. State of Goa). Following the said decision, in 2019 SCC Online SC 180 (Parkash Chand Vs. State of Himachal Pradesh), a Three Judges Bench, while considering the inordinate delay in making the complaint and the manner, in which, the complaint had been given, had allowed the appeal, acquitting the accused therein. In the case on hand, the Prosecution has not explained the delay satisfactorily to base conviction under Section 376 of IPC.

17. In the case on hand, as stated above, it is found that the complaint, Ex.P1 was made, after a delay of four months. When the case of the Prosecution mainly rests on the sole testimony of the Prosecutrix, it would be unsafe to convict the Appellant, especially when the Prosecutrix could venture to wait for more than four months for filing the First Information Report for rape, which leaves the accused totally defenceless. Had the Prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the Prosecutrix as to show the sign of rape. In this case, PW.9 Doctor, who examined the Prosecutrix very much belatedly on 23.10.2008, has though opined that no injury or symptom of rape was found on the private parts of the Prosecutrix, however, stated that if only the Prosecutrix had been examined immediately after the occurrence, there could have been a possibility of finding out whether an offence of rape had been committed. In this case, the occurrence was stated to have occurred on 24.5.2008, the complaint had been preferred on 11.9.2008, the case had been registered on 9.10.2008 and the Prosecutrix had been sent for medical examination on 20.10.2008.

18. Further, in a case of rape, though it is sufficient and enough to believe the statement and the evidence of the solitary witness, the Prosecutrix, in order to base conviction for the offence of rape, the evidence of the Prosecutrix should inspire confidence, for which a careful scrutiny of the evidence

has to be done. In this case, the Prosecutrix/victim has been examined as PW.1.

19. Even with regard to the earliest complaint stated to have been given by PW.1, she had, in her cross examination, stated that it was lodged after seven days from the date of the occurrence and she did not remember as to when the second complaint, Ex.P1 was given. There is also no evidence on record to show the earliest complaint being preferred by PW.1.

20. Admittedly, the victim was aged 21 years at the time of occurrence. In her cross examination, PW.1 has deposed that she sustained injury on her breast at the time of occurrence and at that time, there were other persons of that area in the neighbouring houses. The medical evidence does not support the case of the Prosecution. If the medical examination would have been conducted at the initial point of time and immediately after the occurrence, the Prosecution would have been able to prove its case beyond all reasonable doubts and at the same time, the Appellant would have been able to disprove the case of the Prosecution. Admittedly, the Prosecutrix was examined by PW.9, Doctor very much belatedly, on 23.10.2008. Naturally, after much delay, any symptom of rape would not have been found. PW.9 Doctor has also deposed to that effect. Further, in her cross examination, PW.1 has deposed that she sustained injury on her breast at the time of occurrence, she never disclosed the same either in the complaint or to the Police enquiry. Only when she was examined by the Doctor, PW.9 on 23.10.2008, she had told about the same.

21. The evidence of PW.2, who is the mother of the victim, also does not support the case of the Prosecution, inasmuch as she has stated that she knew about the occurrence through her daughter, PW.1. PW.3, who is the brother of PW.1 also knew about the occurrence through PW.2 over telephone. PW.4, PW.5 and PW.6, who were working along with the Appellant/accused as coolie, have turned hostile. Significantly, PW.6 has deposed that there was a love affair between the victim and the Appellant/accused and that the Appellant/accused used to go to the house of the Prosecutrix frequently. PW.7, who was also a coolie worker, has deposed in his evidence that the Appellant/accused along with the Prosecutrix came in a two wheeler to attend the kanni pooja in respect of a Sabarimalai Yatra by his cousin. PW.8 has also given evidence similar to that of PW.7. If the evidence of PW.7 and PW.8 is taken into consideration, it could be inferred that even after the alleged offence of rape, PW.1 and the Appellant/accused were moving around.

22. The Doctor, PW.9, who examined the victim on 23.10.2008, has deposed that the victim was aged above 18 years and was capable of having sexual intercourse and that she was not pregnant and in the cross examination, PW.9 has stated that there was no injury found on her private parts. In Ex.P2, accident register, it was noted that the Prosecutrix is above 18

years of age at the time of occurrence and she had capacity to have sexual intercourse and that she was not pregnant.

23. It is seen, thus, from the analysis of the evidence done as above that PW.2 and PW.3 are the interested witnesses. PW.4 to PW.6 have turned hostile. There was no direct witness examined on the side of the Prosecution. Though, according to the Prosecutrix, there were neighbours available in the neighbouring houses, none of them had been examined by the Prosecution.

24. Thus, this Court finds that the evidence of PW.1, Prosecutrix does not inspire confidence. It is also clear that Ex.P1, complaint is not only embellished, but also tainted with falsity. The Trial Court erred in convicting and sentencing the Appellant/ accused based on the evidence of PW.1.

25. Even assuming that the occurrence is accepted as true, it can only at the most suggest a case of consensual relationship, rather than a case of rape. If the Prosecutrix would have made a hue and cry, at the time of occurrence, the same would have been noticed by the neighbours, thereby suggesting that there was no resistance by the Prosecutrix, at the time of occurrence. As also analysed above, the evidence suggests that there was an affair between the Appellant/ accused and PW.1 and that she was aged 18 years and was competent to have sexual intercourse as per the medical evidence. There is also evidence to the effect that both the Appellant/ accused and the victim went together in a two wheeler to attend a kanni pooja as stated above, after the occurrence and that the Appellant/ accused used to go to the house of the Prosecutrix frequently. The conduct of the victim as well as the Appellant/ accused said to have been deposed by the other witnesses at the time occurrence, does not favour the case of the Prosecution that the offence of rape had been committed.

26. It is no doubt true that the offence of rape is a very serious offence and also inhuman on the part of any person, committing such a sexual assault on innocent victim girls. It is equally well settled in law that a conviction can be based on the sole testimony of Prosecutrix, if her evidence inspires confidence and does not suffer from infirmities or is not improbable and is found to be trustworthy and reliable. If the offence is proved, the accused should be punished with adequate sentence. But, at the same time, the Court should also guard against false and frivolous cases. In the case on hand, as found above, the evidence of the Prosecutrix, PW.1, does not inspire confidence and is not found to be trustworthy.

27. As also contended by the learned counsel for the Appellant, it is not a case of rape against will, but a case of consensual act. Nowhere, in her evidence, PW.1 has stated that when the accused had sexual intercourse with her, she attempted to resist his move or that she had expressed her unwillingness. It is therefore, not possible to accept the finding of the Trial Court that merely because the victim has stated that she was raped, it follows that there was forced sexual intercourse

against the will of the victim and overpowering her resistance. It is also elicited from evidence that the victim girl did not raise hue and cry at the time of occurrence. As stated above, if the victim would have raised a hue and cry, it would have been noticed by the neighbours.

28. In the decision of the Honourable Supreme Court reported in 2003 SCC Cri. 775 (Uday Vs. State of Karnataka), it was held that the Court must also weigh the evidence, keeping in view the fact that the burden is on the Prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

29. In 2008 2 SCC Cri 207 (Radhu Vs. State of MP), the Honourable Supreme Court, while holding that the finding of guilty in a case of rape can be based on the uncorroborated evidence of the Prosecutrix and that her testimony should not be rejected on the basis of minor discrepancies and contradictions, had held that the absence of injuries on the private parts of the victim will not by itself falsify the case of rape nor can be construed as evidence of consent, however, at the same time, the Courts should bear in mind that false charges of rape are not uncommon and that there are rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. The Honourable Supreme Court had further held that whether there was rape or not would depend ultimately on the facts and circumstances of each case. In the case on hand, as stated above, the Prosecution was not able to produce any such evidence to show the injuries on the private parts of the victim, since the Prosecutrix was examined by the Doctor, very much belatedly after the time of occurrence and further, it is not a case where the victim was threatened or forced to give her consent.

30. In 2000 3 SCC 454 (Rang Bahadur Singh Vs. State of UP), it was held as under:-

"The time-tested rule that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that appellants were the real culprit."

31. Reliance is also placed on the decision of this Court, reported in 2007-1-LW-Crl.18 (Mirthagai Ali Vs. State), wherein it was held that the evidence of PW.1, Prosecutrix does not at all inspire confidence, as her version not only falsified by the evidence of her own mother/ PW.2, but also falsified by the medical evidence. In the case on hand, when considering the entire Prosecution case, this Court finds that the evidence

of the witnesses, namely, PW.1 to PW.6 does not inspire confidence, as the victim girl has not suffered any injury, much less any marks of violence were found on her, coupled with the medical evidence, as narrated above and that the Prosecution could not substantiate the charges levelled against the Appellant under Section 376 of IPC.

32. The infirmities and the discrepancies, pointed out above and the circumstances in this case, cast a shadow of doubt over the veracity of the Prosecution, which is not sufficient to sustain an order of conviction solely on the basis of the testimony of PW.1, which is not trustworthy and does not inspire confidence. Having carefully scrutinized the evidence on record, I am of the opinion that the Prosecution has not proved its case beyond all reasonable doubt and consequently, the appellant is entitled to the benefit of doubt and the impugned judgement of conviction and sentence is unsustainable in law.

33. In the result, this Criminal Appeal is allowed. The impugned judgement of conviction and sentence is set aside. The Appellant is acquitted of the charges levelled against him. The bail bond, if any executed by the Appellant, shall stand cancelled and the fine amount, if any paid by the Appellant, shall be refunded to him.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

- 1.The Sessions Court,
Mahila Court, Perambalur.
- 2.The Judicial Magistrate,
Jayamkondam.
- 3.The Chief Judicial Magistrate,
Perambalur (For Information).
- 4.The Mahila Court,
Perambalur.
- 5.Inspector of Police,
All Women Police Station,
Jeyamkondam,
Ariyalur.

6.The Public Prosecutor,
High Court,
Madras

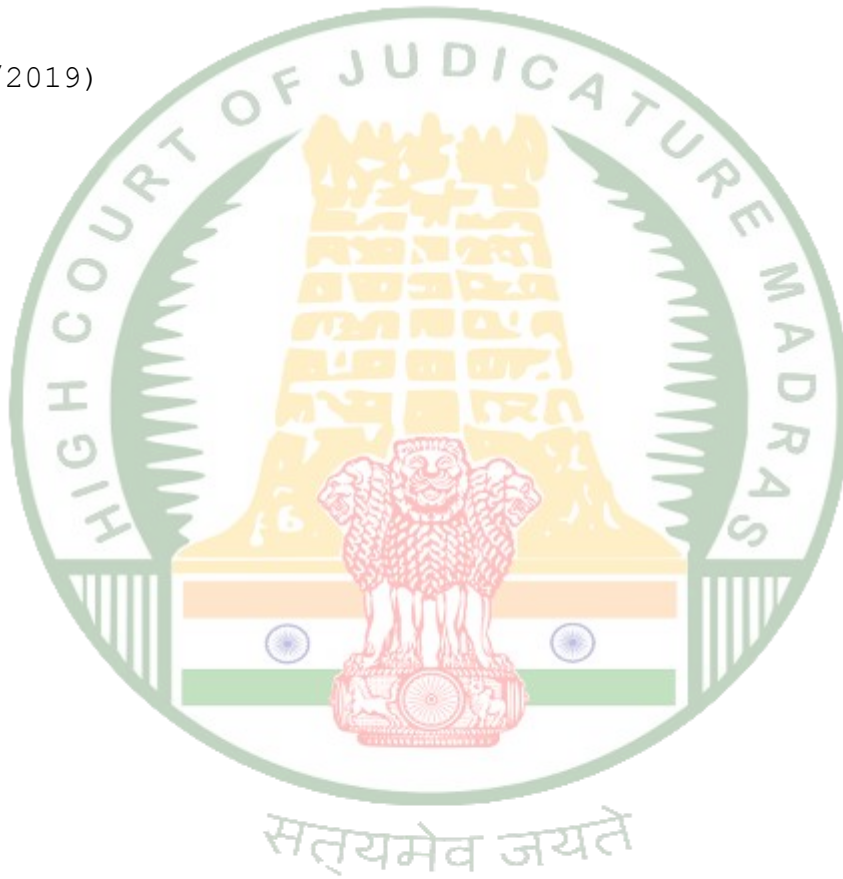
7.The Superintendent,
Central Prison,
Trichy.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.24299

CrI.A.No.292 of 2010

SJ(CO)

RRS (08/05/2019)



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