

BAIL SLIP-I

The Appellant/ Petitioner/Accused NO.1 namely .Nirmal@ Nirmal Singh S/o.Koil Pillai was directed to be released on bail as per order of this Court dated 04.06.2012 in MP.NO.2/12 IN CRL.A.No.147 of 2012 on the file of this Hon'ble court.

BAIL SLIP-II

The Appellants/ Petitioners/Accused NO.1&2 namely . 1.Nirmal@ Nirmal Singh S/o.Koil Pillai ,2.Christoper S/o.samuel were directed to be released on bail as per order of this Court dated 17.04.2012 in MP.NO.1/12 IN CRL.A.No.147 of 2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2019

PRONOUNCED ON : 26.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.147 of 2012

1.Nirmal@ Nirmal Singh
2.Christoper

... Appellants/
Accused/1 and 2

Vs.

State by,
Inspector of Police,
R-6 Kumaran Nagar Police Station,
Chennai 83.
(Crime No.631 of 2010)

... Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 23.12.2011 passed by the Sessions Court (Mahalir Neethimandram), Chennai in S.C.No.79 of 2011.

For Appellants : Mr.A.Arasu Ganesan
For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocte (Crl. Side)

J U D G M E N T

This criminal appeal is directed against the judgment and order of conviction and sentence dated 23.12.2011 passed by the Sessions Court (Mahalir Neethimandram), Chennai in S.C.No.79 of 2011.

2.The prosecution story is as follows :

2.1. The victim girl 'X' was 19 years old on 09.07.2010, when she was allegedly raped by Nirmal @ Nirmal Singh (A1). She is a native of Agathikulam village in Tuticorin district, where her father was employed as a cook. She came to Chennai in search of employment and got a job as a salesgirl in Jayachandran textiles, Kodambakkam. She was staying along with her friends Nandhini and Keerthana in a rented accommodation in Thiyagaraya Nagar. Her relative Joseph borrowed Rs.1,000/- from her, promising to return the amount in three days. Three days later, he told her that his friend Nirmal (A1) would return the amount to her. Accordingly, Nirmal (A1) contacted her and called her to his house. When she went to Nirmal's (A1) house on 09.07.2010, she saw Christopher (A2), who was already known to her. When she went into Nirmal's (A1) house, suddenly they [Nirmal (A1) and Christopher (A2)] closed the door and Nirmal (A1) raped her. He also filmed her nude and threatened her, not to reveal this to anyone. However, she came out and informed her father Ponnudurai (P.W.2) over phone, who in turn asked her to go to his brother David Kannan's (P.W.3) house in Chennai and take his help. She went to the house of her paternal uncle David Kannan's (P.W.3) and narrated the incident. The next day, Ponnudurai (P.W.2) rushed to Chennai.

2.2. A written complaint (Ex.P1) was given by 'X', based on which, the police registered a case in Crime No.631 of 2010 on 11.07.2010 at 22.30 hours for the offences under Sections 341, 354 and 376 IPC and took up investigation of the case. The victim girl 'X' was sent for medical examination. The accused were arrested and they were sent for medical examination. After completing the investigation, the police filed a final report in P.R.C.No.196 of 2010 on the file of the XIII Metropolitan Magistrate Court, Saidapet, Chennai for the offences under Sections 341, 354 and 376 read with Section 34 IPC against Nirmal (A1) and Christopher (A2).

2.3. On appearance, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session and was made over to the Sessions Court (Mahalir Neethimandram), Chennai for trial. The

trial Court framed charges for the aforesaid offences against the accused and on questioning, they pleaded "not guilty".

2.4. On the side of the prosecution, 11 witnesses were examined, 16 exhibits were marked and 5 material objects were marked. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they denied the same. No witness was examined on behalf of the accused nor any document marked.

2.5. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 23.12.2011 in S.C.No.79 of 2011, convicted and sentenced the accused as under :

Rank of the accused	Provision under which convicted	Sentence
Nirmal (A1)	Section 341 IPC	1 month simple imprisonment and fine of Rs.500/- in default, to undergo 1 week simple imprisonment
	Section 376 IPC	7 years rigorous imprisonment and fine of Rs.25,000/- in default, to undergo 6 months simple imprisonment
Christopher (A2)	Section 341 IPC	1 month simple imprisonment and fine of Rs.500/- in default, to undergo 1 week simple imprisonment
	Section 354 IPC	1 year rigorous imprisonment and fine of Rs.5,000/- in default, to undergo 6 months simple imprisonment
	Section 376 read with 34 IPC	7 years rigorous imprisonment and fine of Rs.25,000/- in default, to undergo 6 months simple imprisonment

In addition to the above said sentences, a sum of Rs.55,000/- was also ordered to be given as compensation to the victim girl 'X' as per Section 357 Cr.P.C. Challenging the conviction and sentences, this appeal has been filed.

3. Heard A.Arasu Ganesan, learned counsel for the accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4. The prosecution case mainly rests on the evidence of 'X' and therefore, it is imperative that her evidence is discussed in detail. In her evidence, 'X' has stated that, she was working in Jaychandran textiles and that she studied up to 10th standard, came to Chennai and got a job in Jayachandran textiles in Mambalam; she was staying in a ladies hostel; when she went to her native place, she got introduced to her sister Jayanthi's husband's brother Joseph; Joseph came to Chennai, met her and requested her to give a hand loan of Rs.1,000/-, saying that he would return it in three days; he further told her that he is proceeding to Tirupur in connection with a work; when she asked him as to how, he would return the amount in three days if he is going to Tirupur, he stated that his friend Nirmal (A1) will give her the money; on this assurance, she gave Joseph Rs.1,000/-; on 08.07.2010 around 09.00 p.m., she received a call from Nirmal (A1), who told her that he is Joseph's friend and asked her to come and collect the money; on 09.07.2010, while she was having her breakfast with her friend Nandhini, she got a call once again from Nirmal (A1) asking her to come to Saidapet railway station to collect the money and therefore, she went to Saidapet railway station around 10.00 a.m., where she met Nirmal (A1), who introduced himself; he told her that he is also related to her and asked her if Joseph did not tell anything about this; he further told her that his parents are at home and asked her to come to his home; since he insisted, she accompanied him to Sadayappa Street, Saidapet, which was opposite a medical shop; there, she saw Christopher (A2), whom she knew earlier; she found that Christopher (A2) was drunk; she did not find Nirmal's (A1) parents in the house and so, she wanted to return immediately; when she attempted to get out of the house, Christopher (A2) held her by her dress and pushed her in a side room; she hollered but, he stuffed her mouth with a lungie and increased the television volume in the hall; she prayed him to leave her, but, Christopher (A2) held her by her hand and Nirmal (A1) undressed her, then, Christopher (A2) went out to stand guard; Nirmal (A1) pushed her on the bed, hugged her and

held her tight and raped her; he took nude photos of her in his cell phone; she wept and requested him to release her, but, the room was locked from outside and the sound of the television was high; she heard the voice of a third person talking to Nirmal (A1) outside the room; from the conversation they had, she inferred that it was the landlord and he had come down to find out as to why the television was blaring; she heard Nirmal (A1) talking to him nicely and sending him away; after some time, once again Nirmal (A1) forcibly had sex with her; she started bleeding in her private parts; after a long gap, only in the evening, he returned her clothes and threatened her with her nude photographs saying that she should come to him whenever he calls; she came out and telephoned her father and cried to him; her father asked her to go immediately to his brother's house; little later, her paternal uncle David Kannan (P.W.3) called her and asked her what had happened; he asked her to come to his house and so she took an auto rickshaw and went to his house and wept; he contacted her father and asked him to come immediately to Chennai; on 10.07.2010, her father came to Chennai and they all went to a police station in Thiyagaraya Nagar to complain; the police there asked them to go to Saidapet police station and accordingly, she went with her father and uncle to Saidapet police station and gave a written complaint (Ex.P1); the police asked her to identify the house; the police told her that they would follow her and send her ahead; she went to Nirmal's (A1) house and phoned him; he welcomed her inside and immediately, police caught him; she handed over the clothes that she was wearing at the time of the incident to the police and they were marked as M.O.1 (series); the police sent her for medical examination.

5. The victim girl 'X' was examined in-chief on 08.08.2011, but, was not cross-examined on the same day, on account of paucity of time. She was recalled and cross-examined on 20.08.2011. In the cross-examination, she was questioned about the place of her employment, for which, she gave the relevant answers. It may be relevant to state here that in the complaint (Ex.P1), she had clearly stated that Nirmal (A1) called from 9840858542 to her mobile. Though she did not give this number in the chief-examination, when questioned by the defence counsel, she gave this number in the cross-examination. When she asked as to how long was Nirmal's (A1) house from the railway station, she says it was about 1.5 kms. She stated that she was wearing a t-shirt and jeans, when she went to Nirmal's (A1) house. It may be recalled that the jeans and t-shirt were marked as M.O.1 (series) along with her undergarments. She gave the general description of

the hall and the room, in which, she was kept under illegal confinement and raped. She has stated that the television was in the 2nd hall. She has further stated that the accused released her only at 05.00 p.m. Ultimately, it was merely suggested to her that she has falsely implicated the accused, which she denied. No motive for false implication was suggested to her.

6. Dr.Seethalakshmi (P.W.9), who medically examined 'X' on 13.07.2010 on the directions of the XXIII Metropolitan Magistrate, in her evidence, has stated that there was no external injuries, hymen was not intact, her vagina admitted two fingers. Ultimately, she gave her report (Ex.P8), wherein, she has stated that there is evidence for sexual intercourse.

7. Mr.Arasu Ganesan, learned counsel for the accused contended that the medical examination does not corroborate the evidence of 'X' inasmuch as, no physical injuries were found on her body. Learned counsel further contended that there was delay in lodging the complaint, inasmuch as the incident is said to have taken place on 09.07.2010, whereas, the complaint was lodged only on 11.07.2010. In Ravinder Kumar and another Vs. State of Punjab [(2001) 7 SCC 690], the Supreme Court has held that delay in lodging the F.I.R. cannot be fatal in all cases and just because, an F.I.R. has been promptly lodged, that does not mean that the case is genuine and similarly, just because the F.I.R. is lodged with a delay, the case does not automatically become false. In this case, the victim girl 'X', a 10th standard drop out, was 19 years old, who has come to Chennai from a village in deep south of Tamil Nadu, in search of a job and was staying with her friends in a rented accommodation. Her father was working as a cook in the village. Thus, her family background suggests that she had no one to turn to, but to inform her father, who was far away. On her father's advice, she went to her uncle's house and narrated everything.

8. The victim girl's ('x') father Ponnudurai (P.W.2), in his evidence, has stated that, his daughter called him over phone and wept and told him that, when she went to collect the money that was given to Joseph, she was raped; he asked her to go immediately to his younger brother's house in Vyasarpadi; thereafter, he rushed to Chennai by bus. It is common knowledge that Tuticorin is not near to Chennai, for him to reach in a few hours as it is located beyond Madurai.

9. David Kannan (P.W.3), in his evidence, has stated that on 09.07.2010, his brother Ponnudurai (P.W.2) called him and told him that his daughter was having a serious problem and that, he had asked her to come and meet him; 'X' came weeping to his house and narrated what all had happened. David Kannan (P.W.3) is an ordinary fruit vendor in Vyasarpadi area, which is in North Chennai. Both of them waited for Ponnudurai's (P.W.2) arrival and on Ponnudurai's (P.W.2) arrival, they went to Thiyagaraya Nagar police station to lodge a complaint. As is their wont, our police showed least sympathy and instead of registering a case, sent them to the jurisdictional station in Saidapet. Therefore, in the facts and circumstances of this case, the delay in lodging the complaint, cannot be said to be fatal to the case of the prosecution.

10. Even in the cross-examination of Ponnudurai (P.W.2) and David Kannan (P.W.3), the defence did not attribute any motive for foisting a case on them. Learned counsel for the accused contended that Joseph, who had got the loan was not examined as a witness and therefore, the prosecution case becomes suspect. It would have been an ideal situation, had the prosecution examined Joseph as a witness. No question was put to the Investigating Officer by the defence with regard to the non-examination of Joseph. At the most, the non-examination of Joseph will only be a remiss in the investigation and that, by itself will not vitiate the evidence of the victim girl 'X' (P.W.1), Ponnudurai (P.W.2) and David Kannan (P.W.3). The conduct of victim girl 'X' (P.W.1) in immediately telephoning her father and rushing to her uncle's house is relevant under Section 8 of the Evidence Act.

11. The prosecution has examined Vimalanathan (P.W.4), the owner of the house, who has stated that Nirmal (A1) and Christopher (A2) were his tenants. Of course, he has not spoken anything about coming to the place of occurrence at the relevant point of time. The victim girl 'X' has not categorically stated that the person who came and spoke to Nirmal (A1) was Vimalanathan (P.W.4). She has only stated that she heard a conversation outside and from the tenor of the conversation, she believed it to be the house owner.

In view of the foregoing discussion, this Court does not find any infirmity in the findings of the trial Court warranting interference. In the result, this criminal

appeal stands dismissed. The trial Court is directed to secure the presence of the accused to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Sessions Judge (Mahalir Neethimandram),
Chennai.

2.The Inspector of Police,
R-6 Kumaran Nagar Police Station,
Chennai 83.

3.The Public Prosecutor,
High Court, Madras.

4.The Metropolitan Magistrate,
XXIII, Saidapet, Chennai

5.The Chief Metropolitan Magistrate,
Egmore, Chennai (for information)

6.The Superintendent,
Central Prison, Puzhal Prison,
Chennai

Copy to: The Deputy Registrar,
Criminal Side,
High Court, Madras.

(Registry to transmit the original records
to the trial Court forthwith.)

+1cc to Mr.A.Arasu , Advocate SR.No. 82643

CRL.A.No.147 of 2012

vba co
A.SK(31/10/2019)