

BAIL SLIP

The Appellant/Accused namely Agathiyan @ Ambedkhar S/o. Radhakrishnan, accused in S.C.No.252/2011, Sessions Judge (Mahila Court) Cuddalore was released on bail vide order dated 25.04.2012 made in CrI.M.P. 1/2012 in CrI.A.No.289 of 2012 passed by this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.10.2019

PRONOUNCED ON : 30.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.289 of 2012

Agathiyan @ Ambedkhar

.. Appellant/
Accused

Vs.

State rep. by
The Inspector of Police,
Pennadam Police Station,
Thittakudi Taluk,
Cuddalore District.
(Crime No.210 of 2010)

.. Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 28.03.2012 passed by the Sessions Judge (Mahila Court), Cuddalore in S.C.No.252 of 2011.

For Appellant : Mr.M.Velmurugan

For Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (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 28.03.2012 passed by the Sessions Court (Mahila Court), Cuddalore in S.C.No.252 of 2011.

2.It is the case of the prosecution that while the victim girl 'X' (P.W.3-aged 7 years) was playing in the street near her house on 09.10.2010 around 05.00 p.m. with her cousins Sivaranjani (P.W.4-aged 9 years) and Sathyapriya (P.W.5-aged 6 years), the accused, who is a resident of the same locality

known to the children, took 'X' to his house, removed her undergarment and attempted to sexually abuse her.

2.1.Thirumalsamy (P.W.1), the father of 'X' came searching for her and found her weeping near the house of the accused. When he questioned 'X', she told him as to what the accused had done and therefore, on the written complaint (Ex.P1) lodged by him, the police registered a case in Crime No.210 of 2010 under Section 376 r/w 511 IPC on 09.10.2010 at 09.45 hours and prepared the printed F.I.R. (Ex.P6). Investigation of the case was taken over by Sridharan (P.W.8), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P7).

2.2.'X' was examined by Dr.Paariselvi (P.W.6) at the Government Hospital, Tittagudi on 09.10.2010 at 09.45 p.m. and a copy of the accident register was marked as Ex.P3. Since the Government Hospital, Tittagudi lacked infrastructure, 'X' was referred to the Government Hospital, Cuddalore, for further treatment. Dr.Latha (P.W.7) examined 'X' and gave her treatment and the treatment records were marked as Ex.P5. Copy of the birth certificate of 'X' (Ex.P8) shows that she was born on 11.05.2004 and was seven years old on the date of incident viz. 09.10.2010. The accused was arrested. After completing the investigation, the police filed a final report in P.R.C.No.6 of 2011 under Section 376(2)(f) r/w 511 IPC against the accused.

3.On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.252 of 2011 and was made over to the Mahila Court, Cuddalore, for trial. The trial Court framed a charge under Section 376(2)(f) r/w 511 IPC against the accused and when questioned, he pleaded "not guilty".

4.To prove the case, the prosecution examined 8 witnesses and marked Exs.P1 to P8. When the accused was questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the accused nor any document marked.

5.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 28.03.2012 in S.C.No.252 of 2011, acquitted the accused of charge under Section 376(2)(f) r/w 511 IPC, but convicted him of the offence under Section 354 IPC and sentenced him to undergo one year rigorous imprisonment. Challenging the conviction and sentence, the accused have filed the present appeal.

6.Heard Mr.M.Velmurugan, learned counsel for the appellant/

accused and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

7.Learned counsel for the appellant submitted that a false case has been trumped up against him, on account of previous enmity between the appellant and Thirumalsamy (P.W.1). He further contended that both the doctors viz. Dr.Paariselvi (P.W.6) and Dr.A.S.Latha (P.W.7) did not notice any injury on 'X' and they have also stated that there is no evidence of sexual assault. His main contention was that the victim girl 'X', in her cross-examination, has stated that she deposed as told by her father and this clearly shows that she was tutored to give false evidence.

8.Per contra, learned Government Advocate (Crl. Side) refuted the contentions.

9.This Court gave its anxious consideration to the rival submissions.

10.The prosecution has proved beyond doubt that the victim girl 'X' (P.W.3) was 7 years old at the time of the incident and was studying in the 2nd standard in the Panchayat Union Primary School. The victim girl 'X' in her evidence, has stated that, she is studying in 2nd standard in the Panchayat Union Primary School; that Thirumalsamy (P.W.1) is her father and Sathyaseelan (P.W.2) is her paternal uncle; she knows the accused (appellant); she was playing in the street and at that time, the appellant called her to his house, removed her panties and laid on her; at that time, her father and uncle came; she had pain in the urination part; then, her father took her to the police station and from there, she was taken to the hospital.

11.In the cross-examination, 'X' was asked whether she would study well, for which, she stated in the affirmative. When she was asked whether she has stated in the Court whatever her father had asked her to say, she stated in the affirmative. However, it was suggested to her that she was giving false evidence, which she denied. Had the defence stopped with that, then, this Court would have had second thoughts to accept her testimony. Thereafter, to the questions put by the defence, she has stated that she was standing near the house of the appellant and was weeping and at that time, her father and uncle came there and her father carried and took her home. The evidence of 'X' that she was playing in the street and at that time, the appellant took her, has been corroborated by Sivaranjani (P.W.4) and Sathyapriya (P.W.5). All the three children were playing in the street at the relevant point of time and the appellant had taken 'X' to his house.

12.Learned counsel for the appellant contended that Sivaranjani (P.W.4) and Sathyapriya (P.W.5) are admittedly the cousins of 'X' and therefore, they are interested witnesses. In the opinion of this Court, the evidence of these two children viz. Sivaranjani (P.W.4) and Sathyapriya (P.W.5), cannot be brushed aside on the ground that they are interested witnesses, because, they have no reasons to falsely implicate the appellant. The defence was not able to make any serious dent in the testimony of these two children in the cross-examination. The statement of 'X' that she has deposed whatever her father had told her while coming to the Court, cannot be seen in isolation and must be viewed in totality. The father in his anxiety must have briefed the child en route to the Court to give her confidence to speak in respect of an incident that had taken place long back. The child has truthfully stated what her father briefed her. This, by itself, cannot mean that she had lied. In the further cross-examination, she has stated that she was standing near the house of the appellant and weeping, when her father came. She fell sick and was an inpatient in the hospital for 9 days.

13.Thirumalsamy (P.W.1), the father of 'X', has stated that, on 09.10.2010, around 5'o clock, his daughter was playing with Sivaranjani (P.W.4) and Sathyapriya (P.W.5) in the street and at that time, he was gardening in his house; when he wanted to feed the children, he did not find 'X' and when he enquired with Sivaranjani (P.W.4), she told that the appellant had taken 'X' with him; at that time, Sathyaseelan (P.W.2) also came there and together they came to the house of the appellant, where they found 'X' standing out weeping; when they enquired with 'X', she told them that the appellant took her inside the house, removed her undergarment and laid on her; he brought her home and thereafter, he went along with his daughter ('X') to give police complaint; the police sent them to the Government Hospital, Tittagudi, where, his daughter ('X') was examined and they referred to the Government Hospital, Cuddalore, for further treatment.

14.Thirumalsamy (P.W.1) admitted that the appellant was his distant relative and his house is two houses away from his (appellant's) house. He has further stated that the land in which his house and the appellant's house are located belongs to one Srinivasan Pillai and out of 9 cents, 6 cents was purchased by his (Thirumalsamy-P.W.1's) father Sadasivam Pillai and the balance 3 cents was with Srinivasan Pillai. He admitted that the complaint was not written by him, but, another person helped him to write the complaint. He also admitted that the balance of 3 cents belonging to Srinivasan Pillai is situated near the house of the appellant and the appellant would dump garbage in that land. It was suggested to him that there was a quarrel between him and the appellant, in respect of the enjoyment of

the said 3 cents land and that is why he had foisted the case on the appellant, which suggestion he denied. Apart from this suggestion, the appellant has not placed any credible material to show that there was a strong motive for Thirumalsamy (P.W.1) to foist a case of sexual abuse using his own daughter.

15.It is true that Dr.Paariselvi (P.W.6) and Dr.Latha (P.W.7), have stated that they did not find any external injury on 'X' and there was no visible evidence of sexual assault. However, the medical records show that the health condition of the child was very bad and that is why she was kept as an inpatient in the Government Hospital, Cuddalore from 10.10.2010 to 18.10.2010. This clearly shows that the child was playing normally as others, but, fell sick after the incident, perhaps due to the trauma undergone by her and had to be admitted as an inpatient for 9 days. Even in the statement under Section 313 Cr.P.C., the appellant has not stated as to why Thirumalsamy (P.W.1) should foist a case of this nature on him.

16.In the opinion of this Court, there are sufficient materials to convict the appellant for rape attempt, but, strangely by a pernicious reasoning, the trial Court has convicted the appellant under Section 354 IPC and has given a flea bite sentence. In the absence of the State filing any appeal challenging the acquittal of the appellant of the charge under Section 376(2)(f) read with 511 IPC, this Court is helpless.

In the result, this appeal is dismissed as being devoid of merits. The trial Court is directed to secure the appellant and commit him to prison to undergo the remaining period of sentence, if any.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge
The Sessions Court (Mahila Court),
Cuddalore.

2.The District Munsif cum Judicial Magistrate
Thittakudi

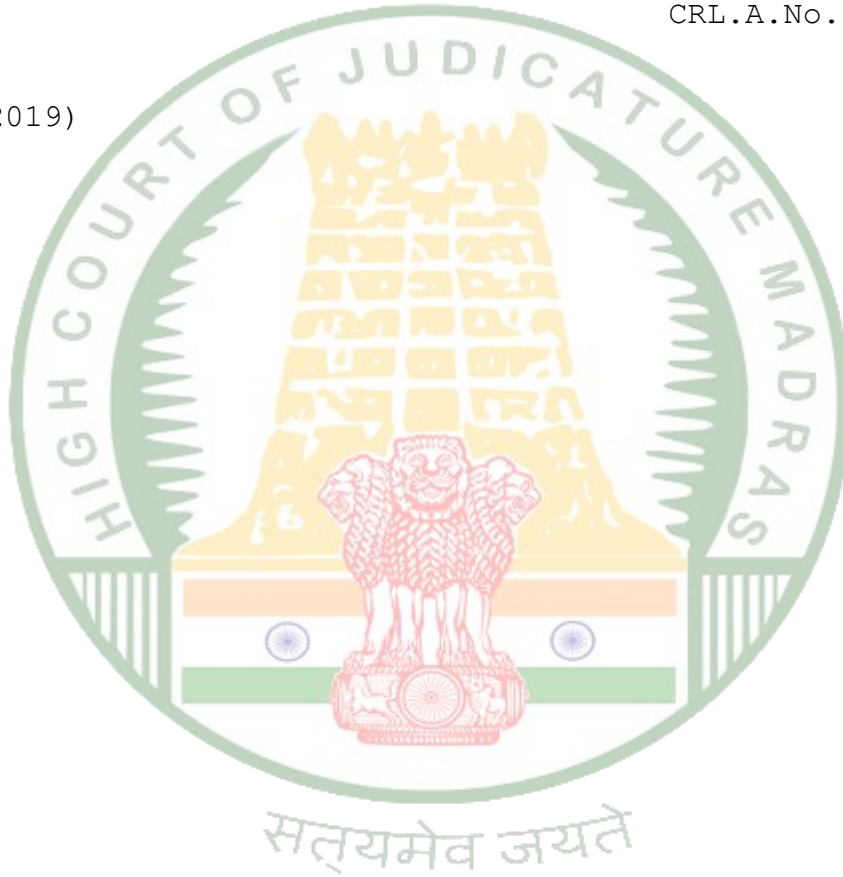
3.The Chief Judicial Magistrate
Cuddalore (for information)

4.The Inspector of Police,
Pennadam Police Station
Thittakudi Taluk
Cuddalore District

5.The Public Prosecutor,
High Court, Madras.

CRL.A.No.289 of 2012

RSV(CO)
SP(28/11/2019)



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