

BAIL SLIP

The Appellants/Accused 1 and 3 namely
1.Sellapappu, W/o.Veerasley,2. Suresh S/o.Veerasley were
directed to be released on bailvide order dated 6/6/12 made in
Crl.MP.No.1/12 in CRL A No.320/12 and dated 2/4/13 made in
Crl.MP.3/12 in Crl.A.320/12 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.A.No.320 of 2012

&

Crl.A.No.90 of 2015

Crl.A.No.320 of 2012

1.Suresh

2.Sellapappu

... Appellants/Accused 1 & 3

Vs.

State Rep. By

The Inspector of Police

All Women Police Station

Perambalur

Crime No.6/2010

.. Respondent/Complainant

Criminal Appeal filed under Section 378 of the Code of
Criminal Procedure to set aside the judgment passed by the
Sessions Judge, Mahila Court, Perambalur dated 21.05.2012 in
S.C.No.37 of 2011.

For Appellant : Ms.S.Sridevi
(Amicus Curiae)

For Respondents : Ms.P.Kritika Kamal
Government Advocate

Cr1.A.No.90 of 2015
State rep. by
The Public Prosecutor
High Court
Madras - 600 104

... Appellant/Petitioner

Vs.

1.Suresh
2.Sellapppu

... Respondents/Accused

Criminal Appeal filed under Section 377 of the Code of Criminal Procedure to enhance the sentence imposed on A1 and A3 by the learned Sessions Judge, Mahila Court, Perambalur in S.C.No.37 of 2011 dated 21.05.2012.

For Appellant : Ms.P.Kritika Kamal
Government Advocate

For Respondents : Ms.S.Sridevi (Amicus curiae)

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment dated 21.05.2012 passed by the Sessions Judge, Mahila Court, Perambalur in S.C.No.37 of 2011.

2. It is the case of the prosecution that Suresh (A1) raped the victim girl 'X' aged around 18 years on 14.01.2010, on account of which she conceived. When 'X' complained to Sellapppu (A3), the mother of Suresh (A1), the former is said to have given a country medicine on 14.03.2010 to 'X' for aborting the foetus. 'X' consumed the medicine and the foetus got aborted. Thereafter, when Selvi (PW1) mother of 'X' questioned Sellapppu (A3) about all these incidents, A3 is said to have threatened her and assaulted her on 01.04.2010. On the typewritten complaint (Ex.P1) given by Selvi (PW1), Kamala (PW10), Sub-Inspector of Police registered a case in Crime No.6 of 2010 under Sections 294(b), 323, 376 and 506(ii) IPC on 11.05.2010 at 08.00 hours and prepared the printed First Information Report (Ex.P7). Investigation of the case was taken over by Sivasubramanian (PW11), Inspector of Police, who went to the place of occurrence and prepared the rough sketch (Ex.P10) and Observation Mahazar (Ex.P9). The Investigating Officer examined Seralathan (PW9), the Headmaster of the school, where 'X' studied and obtained the certified copy of the school Transfer Certificate (Ex.P2), which shows the Date of Birth of

'X' as 12.04.1992. Dr.Vishnu Pradap (PW7) examined 'X' on 12.05.2010 for determining her age. As per the Dentist opinion (Ex.P3), the age was determined as between 15 and 17. As per the radiological report (Ex.P5), the age of 'X' was determined as between 18 and 22. The sexual examination report of 'X'(Ex. P3) states that 'there is no visible recent signs of rape on her, that the victim girl is not pregnant, no signs of surgical intervention for Medical Termination of Pregnancy (MTP), but she would have gone for medical intervention for abortion'. A1 was examined by Dr.Anbarasan (PW8), who in his evidence as well in the examination report (Ex.P6) has stated that Suresh (A1) is capable of having coitus. After examining witnesses and collecting various reports, Sivasubramaniam (PW11) completed the investigation and filed a final report in P.R.C.No.4 of 2010 before the Judicial Magistrate, Perambalur under Section 294(b), 315, 323, 376 and 506(ii) IPC against Suresh (A1), Veerasamy (A2/father of A1), Sellapappu (A3/mother of A1) and Raja (A4/brother of A1).

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 Sessions, Perambalur in S.C.No.37 of 2011 and was made over to Mahila Court, Perambalur for trial. The trial Court framed the following charges against A1 to A4 (Free English translation):

Charges	Accused
Charge No.1	Against A1 That you A1 on 14.01.2010 around 01.00pm told the minor victim girl 'X' that your mother is calling and when she went inside your house, you locked the door and raped her and thereby punishable under Section 376 IPC.
Charge No.2	Against A3 That you A3 on 14.03.2010 gave a country medicine to 'X', asked her to consume it and when she consumed it, the foetus got aborted and thereby you are punishable under Section 315 IPC.
Charge No.3	Against A1 and A2 That you A1 and A2 are guilty of the offence under Section 315 r/w.34 IPC along with A3

Charges	Accused
Charge No.4	Against A3 That you A3 abused Selvi (PW1)/ mother of 'X' in abusive language and thereby punishable under Section 294(b) IPC.
Charge No.5	Against A2 and A3 That on 01.04.2010 at 06.00am when 'X' came to fetch water, you both assaulted her and thereby punishable under Section 323 IPC.
Charge No.6	Against A4 That you A4 in the course of quarrel mentioned in Charge No.5 on 01.04.2010 brandished a knife and criminally intimidated Selvi (PW1) and thereby punishable under Section 506(ii) IPC.

When questioned, A1 to A4 pleaded 'not guilty'.

4. To prove the case, the prosecution examined 11 witnesses and marked Exs.P1 to P9. When the accused were questioned under Section 313 Cr.P.C on the incriminating circumstances appearing against them, they not only denied the same, but also gave a written explanation along with enclosures stating that a false case has been foisted against them by the family members of 'X' due to previous enmity.

5. After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 21.05.2012 in S.C.No.37 of 2011 acquitted A2 and A4 of all the charges, but convicted and sentenced A1 and A3 as follows:

Accused	Provision under which convicted	Sentence
Accused No.1	Sections 376 IPC	4 years rigorous imprisonment and fine of Rs.2000/-, in default to undergo one year simple imprisonment
	Section 315 r/w.34 IPC	4 years rigorous imprisonment

Accused	Provision under which convicted	Sentence
Accused No.3	Section 315 IPC	4 years rigorous imprisonment and fine of Rs.2000/-, in default to undergo one year simple imprisonment

6. Challenging the conviction and sentence, Accused Nos.1 and 3 have prepared the present appeal. The State has preferred C.A.No.90 of 2015 contending that the trial Court should have imposed the minimum sentence of 7 years instead of four years RI for A1.

7. On 23.10.2019, this Court passed the following order:

"On 06.08.2019, there was no representation for the appellant and therefore, the matter was adjourned. Today also there is no representation for the appellant. The Court Officer called Mr.H.Rajasekar, Advocate on record for the appellant at Mobile No.9444027395 around 11.20 am on the directions of this Court. After speaking to Mr.Rajasekar, he reported that Mr.Rajasekar told him that change of vakalat was taken by the parties. Thereafter, Ms.R.Angalaparameswari (Enrollment No.3606/2015), Advocate, junior of Mr.H.Rajasekar, came to the Court at 12.30 am and reported that they had given change of vakalat long back. The fact remains that the accused have not engaged any counsel so far. Hence, the suspension of sentence that was granted to the accused Sellapappu (A3) in M.P.No.1 of 2012 in CrI.A.No.320 of 2012 dated 06.06.2012 and the suspension of sentence and bail that was granted to Suresh (A1) in M.P.No.3 of 2012 in CrI.A.No.320 of 2012 dated 02.04.2013 is hereby cancelled. The police is directed to take them into custody.

2. Till the police takes the appellants into custody, this appeal cannot be kept on Board without any progress. Hence, this Court appoints Ms.S.Sridevi (Enrollment No.924/98), an Advocate who has 21 years of standing in the Bar as counsel for the appellants.

3. The State has also preferred CrI.A.No.90 of 2015 for enhancement of sentence on the ground that after convicting the accused under Section 376 IPC, the trial Court should have awarded the minimum sentence of 7 years of rigorous imprisonment, but had

sentenced the accused only to 4 years of rigorous imprisonment. Ms.Sridevi (Enrollment No.924/98) is appointed for the accused in CrI.A.No.90 of 2015 also.
Call on 01.11.2019."

8. Heard Ms.Sridevi, learned counsel who was appointed as amicus curiae, for the appellants.

9. 'X' in her evidence has stated as follows (Free English Translation):

'I am residing in Kolathur Village and I have studied upto 8th Standard; My school Transfer Certificate is Ex. P2; I am a daily wage earning farm hand; I know A1 to A4 as they are from my village; 10 days prior to Pongal festival in the year 2010 when I was returning home after work while I neared the house of accused, A1 called me to his house saying that he has to give an article to be handed over to my mother; so I went into his house; he closed the door and attempted to rape me; I resisted; he forcibly raped me and told me that I should not tell this to my parents; 3 months later I became pregnant; I approached A1 and told him about my pregnancy for which he did not say anything; I met his mother A3 and told her that I am pregnant; one day while I was coming in the road, A3 gave three black tablets and asked me to consume it saying that it will cause miscarriage; I consumed the three tablets; I developed stomach ache and told my mother whatever had happened; my mother went and questioned A3 for which A3 said that your daughter would have gone with somebody; A3 came to beat my mother and both of them fought; A complaint was given against us and there were attempt to put us in jail; thereafter we went to the All Women Police Station and lodged the complaint.'

10. In the cross-examination she admitted that she does not know the date on which she was ravished. She has also admitted that there is a public tap near the house of the accused and people will be available from 08.00am to 09.00am for collecting water. She stated that she raised alarm when the accused attempted to rape her, but nobody heard her voice. She further admitted that she pushed the accused and resisted the rape. She has further stated that she did not suffer any injuries and A1 also did not suffer any injury. To a specific question by defence, she has stated that her periods stopped three months after the incident. She admitted that the accused had issued a legal notice to her family on account of which there were disputes and a police complaint was also given. She also

admitted that a fight ensued between her family members and the accused for which a criminal case was also registered against them. She denied the suggestion that A1 had not raped her and A3 had not given her any medicine. However, Selvi (PW1), the mother of 'X' has stated that in the year 2010, A1 gave a cup of Rasna beverage mixed with sedatives and raped 'X' in his house. Superadded in the chief-examination that her daughter was missing and when she went in search of her, she saw her daughter and A1 coming from Trichy by bus. In the cross-examination, she admitted that the accused had issued legal notice to her and there were quarrels between both families. She has further stated in the chief-examination that she approached A3 and told her that her daughter has been preganated by A1 and asked her for a solution for which A3 told her that she will make arrangement for her son to marry 'X'. PW1 has also stated in the chief examination that she received a legal notice from the accused and the accused refused to marry 'X' and hence, she went and lodged the complaint (Ex.P1). In the cross-examination, she admitted that Ex.P1 was prepared by an advocate and given to the police and that she does not know of its content. She also admitted that a quarrel ensued in which a police case was registered against her and she went to the Court and pleaded guilty. She denied the suggestion that a false case has been put up against the family members of the accused.

11. Learned counsel for the appellants contended that except the ipsi dixit of PW2, there is no other direct or corroborative piece of evidence to prove the offences in question. She further contended that 'X' was aged above 17 years and from the evidence of PW1 that she saw 'X' and A1 coming together from Trichy by bus would show that they were having an affair and nothing beyond that. Though in the complaint 'X' has been shown as a minor girl, the Transfer Certificate (Ex.P2) and medical evidence clearly show that 'X' was more than 17 years old. The amendment to Section 375 IPC and the POCSO Act came into force much later. 'X' in her evidence has stated that rape had taken place 10 days prior to Pongal festival in the year 2010. Pongal festival normally fall on 14th January or 15th January. 10 days prior to Pongal would mean either 4th or 5th of January, whereas the charge is that the rape had taken place on 14.01.2010. 'X' has stated that she was asked by the accused to come inside his house and when she innocently went inside, he forcibly ravished her. Whereas, Selvi (PW1), mother of 'X' has stated that A1 mixed sedatives in Rasna, gave it to 'X' and thereafter he raped her. It is not the case of 'X' that the accused was continuously having sex with her even thereafter. It is her specific case that she was raped 10 days prior to Pongal festival, whereas in the cross-

examination she has clearly stated that her menses stopped 3 months after the incident. If she had conceived as a result of the rape, either 10 days prior to Pongal festival or on 14.01.2010, as set out in the

charge, she would not have got her periods thereafter, whereas she has categorically stated that her periods stopped three months after she was raped.

12. The complaint in this case has been given with the help of an advocate only on 11.05.2010 and there is an inordinate delay. Normally delay in lodging the complaint in rape cases should not be strictly viewed because the victim may not come out of the trauma that easily. In this case, the witnesses have accepted that the accused had sent a legal notice to the family of 'X' stating that they are spreading rumors that 'X' was ravished by A1 and had called upon the family members of 'X' to desist from spreading such rumors. PW1 and PW2 have accepted the receipt of this notice. Strangely, even thereafter no step was taken to lodge any complaint to the police. As per Charge No.5, a quarrel ensued between the family members of the accused and 'X' on 01.04.2010 in which PW1 was assaulted and threatened. Even after that, no complaint was lodged. If 'X' had taken a stand that she was seduced on the promise of marriage and she did not want to precipitate things by hurriedly going to the police and instead she waited for A1 to marry her and when A1 conclusively reneged, she went and lodged the complaint, this Court would have held that the delay has been explained. In the instant case, there was no love lost between the family of the accused and 'X' and in that circumstances, the delay in lodging the complaint is indeed fatal especially when the accused had issued a legal notice calling upon the family members of 'X' not to spread lies. The medical evidence does not corroborate the evidence of PW1. The reason for this is, 'X' was medically examined only in the month of May. Neither X nor PW1 in their evidence have spoken anything about the alleged quarrel and assault on 01.04.2010, which is the subject matter of charges 5 and 6.

13. Under such circumstances, this Court is unable to sustain the conviction of the appellants in the light of the serious contradictions in the evidence of the prosecution witnesses.

14. In the result, CrI.A.No.320 of 2012 preferred by the accused is allowed and judgment and order passed by the Sessions Judge, Mahila Court, Perambalur dated 21.05.2012 in S.C.No.37 of

2011 is set aside. As a sequitur, the appeal in Crl.A.No.90 of 2015 filed by the State seeking enhancement of sentence is dismissed. The accused are acquitted of all charges. Fine, if any, paid shall be refunded to the accused as remuneration.

This Court places on record its appreciation to Ms.Sridevi (Enrollment No.924/98), learned counsel who was appointed as Amicus Curiae for this case and directs Tamil Nadu State Legal Services Authority to pay Rs.10,000/- (Rupees Ten Thousand only) to Ms.S.Sridevi as remuneration.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gpa
To

1. The Sessions Judge,
Mahila Court, Perambalur.
- 2.The Judicial Magistrate,
Perambalur.
- 3.The Chief Judicial Magistrate,
Perambalur(for information)
4. The Inspector of Police
All Women Police Station
Perambalur
5. The Tamil Nadu State Legal Services Authority
High Court Campus, Chennai.
- 6.The Superintendent,
Central Prison, Trichy.
- 7.The Public Prosecutor,
High Court, Madras - 600 104.

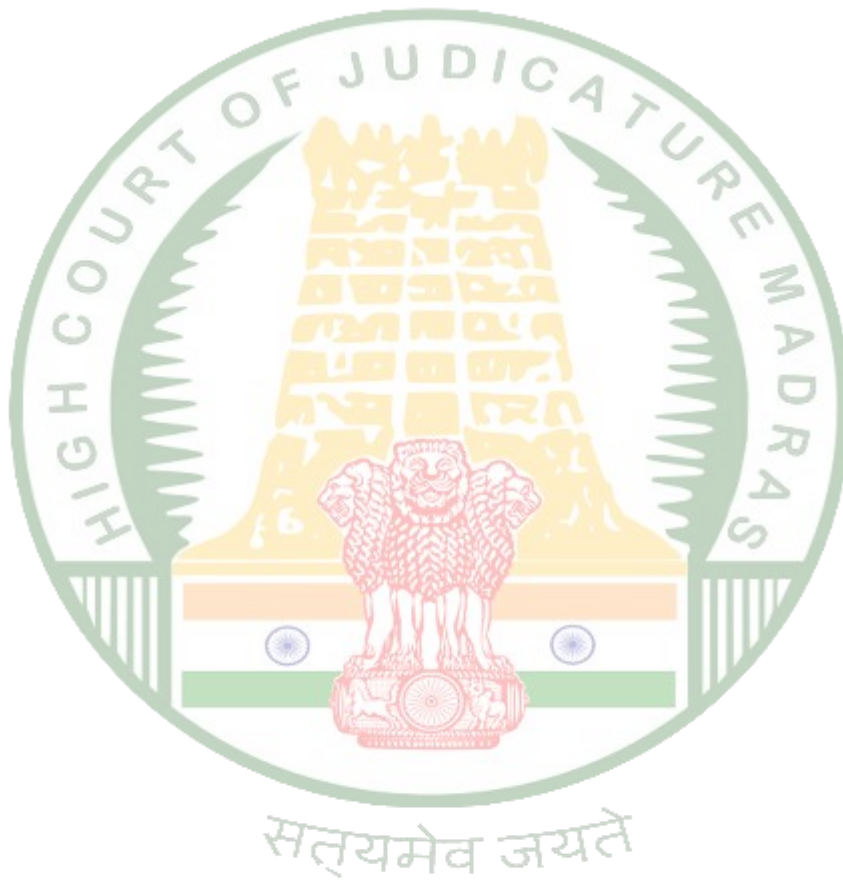
Copy to:

- 1.Ms.S.Sridevi,
Amicus Curiae,
(Entrolment No.924/98)
- 2.The Section officer,
Criminal Section,
High Court, Madras.

+1cc to Ms.S.Sridevi, Advocate SR.90946

Crl.A.No.320 of 2012 &
Crl.A.No.90 of 2015

RSI (CO)
CB(20/12/2019)



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