

BAIL SLIP

The Appellants/Accused Ekambaram, S/o.Manickam, (in CrI.A.Nos.449 of 2012) 1.Selvamani (S/o.Selvam), 2.Santhosh ((S/o.Settu) & 3.Amalraj (S/o.Anthonyraraj)(in CrI.A.840/12) were directed to be released on bail as per the Order of this Court dated 07.08.13 in CrI MP.1/2013 and MP.1/12 in CrI.A.449 & 840/2012 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.Nos.449 & 840 of 2012

Ekambaram ...Appellant in CrI.A.449/2012

1. Selvamani
2. Santhosh
3. Amalraj ...Appellants in CrI.A.840/2012

-Vs-

The State rep. by
The Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District.
(Crime No.115 of 2006) ...Respondent in both the Appeals

Prayer in both the Appeals: These Criminal Appeals are filed under Section 374 of Cr.P.C. praying to set aside the judgment of conviction made by the learned Additional District-cum-Sessions Judge III, Tiruppathur, Vellore District, in S.C.No.277 of 2010 dated 26.06.2012.

For Appellants : Mr.P.Narayanamoorthy
Legal Aid Counsel
- in both the Appeals

Mr.K.B.Arul in CrI.A.449/2012
Mr.M.Rahamath Ali in 840/2012

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (CrI.Side)
- in both the Appeals

COMMON JUDGMENT

These criminal appeals have been directed against the judgment of conviction dated 26.06.2012 made in S.C.No.277 of 2010 by the learned Additional District and Sessions Judge, Additional District and Sessions Court No.III, Tirupathur, Vellore District.

2 The appellant in CrI.A.449/2012 was arrayed as A1 and appellants 1 to 3 in CrI.A.840/2012 were arrayed as A2, A3 & A4. For the sake of convenience, the appellants are referred to as per their array of rank in the Sessions Case.

3 Case of the prosecution is that on 27.01.2006, at about 7.00 p.m., when the victim girl/P.W.1, a spinster aged about 21 years was returning to her house, after completing the work, A1, who is the owner of the Company, in which the victim was working, came and asked her to come with him for giving some details. A1 took the victim girl to a place, where the other four accused were standing and the accused asked to remove her clothes and when she refused, she was made naked by all the accused by removing her dress and they all committed gang rape on her by having forcible sexual intercourse with her one by one till 03.30 a.m. of the next day. A1 has also assaulted the victim, when she tried to make noise. Thereafter, the victim lodged a complaint on the same day i.e. on 28.01.2006 before the respondent police.

4 The respondent police registered a case in Crime No.115 of 2006 against the appellants and one another for the offence punishable under Section 4 of Tamilnadu Prevention of Women Harassment Act and Sections 376(2)(g) and 506(1) of IPC, after investigation, laid a charge sheet before the learned Judicial Magistrate, Vaniyambadi, which was taken on file in P.R.C.No.6 of 2008 and during pendency of the above case, the other accused died and hence the case was proceeded against these appellants alone. Since the offence charged against the appellants is triable only by the Court of Sessions, the case was committed to the learned Principal District and Sessions Judge, Vellore, which was taken on file in S.C.No.277 of 2010 and the same was made over to the learned Additional District and Sessions Judge, Additional District and Sessions Court III, Thirupathur, Vellore District, for disposal.

5 Before the trial Court, in order to prove the case of the prosecution P.Ws.1 to 14 were examined and Exs.P1 to 25 were marked besides material objects 1 & 2. After completing prosecution witnesses, when incriminating circumstances culled out from the prosecution witnesses and put before the accused, they denied as false. On the side of the defence, no one was

examined and no document was marked. The learned trial Judge, after completing trial, found all the accused guilty for the offence punishable under Section 376(2)(g) and 506(1) of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act and by judgment dated 26.06.2012 sentenced them to undergo rigorous imprisonment for a period of ten years with fine of Rs.5,000/- each, in default, to undergo simple imprisonment for a further period of one year each for the offence under Section 376(2)(g) of IPC, sentenced them to undergo rigorous imprisonment for a period of one year with fine of Rs.1000/- each, in default, to undergo simple imprisonment for a further period of three months each for the offence under Section 506(1) of IPC, sentenced them to undergo rigorous imprisonment for a period of one year with fine of Rs.1000/- each, in default, to undergo simple imprisonment for a further period of three months each for the offence under Section 4 of Tamilnadu Prohibition of Women Harassment Act. Aggrieved against the said judgment of conviction, the accused had preferred these appeals before this Court.

6 Since both the appeals are arising out of the same judgment of conviction, both the appeals are taken up together and disposed of by this common judgment. The learned counsel on record for the appellants has not cooperated with the Court and hence this Court appointed a legal aid counsel to argue the matter on merits on behalf of the appellants in both the appeals. When the matter is taken up for hearing on 27.08.2019, the learned counsel on record for the appellant has also appeared before this Court.

7 The learned legal aid counsel appearing for the appellants in both the appeals would submit that there was delay in registering the case, which was not properly explained by the prosecution. All the prosecution witnesses had turned hostile and not supported the case of the prosecution. Even the victim herself in cross examination has denied the very occurrence itself. There is no corroboration for the evidence of victim as well as the prosecution witnesses. The alleged occurrence is said to have taken place at night hours and except A1, all other accused are unknown person to the victim and they were not properly identified by the victim properly and the evidence of victim during cross examination has falsified the case of the prosecution and identification parade. P.W.1 has admitted that she has not given any complaint and the police has not examined her before conducting identification parade and only shows photographs of all the appellants and in that way only P.W.1 identified the accused. Even though, semens were collected, but, prosecution has failed to prove which belongs to which appellant. Further one of the accused had taken the victim to his house and give dress to her and the victim after wearing the

same went to her home, whereas in the complaint she stated that after the occurrence, she escaped from the place. There is contradictions between the prosecution witnesses and the trial Court should have extended benefit of doubt towards the accused, but convicted all the appellants, which warrants interference.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that A1 is the employer of the victim and prior to the occurrence, the victim asked Rs.100/- for her urgent needs. On the day of occurrence i.e. on 27.01.2006, at about 7.00 p.m., when the victim girl/P.W.1, aged about 21 years was returning to her house, after completing the work, A1, who is the owner of the Company, in which the victim was working, came and asked her to come with him for giving some details. A1 took the victim girl to a place, where the other four accused were already waiting and the accused asked to remove her clothes and when she refused, she was made naked by all the accused by removing her dress and they all committed gang rape on her by having forcible sexual intercourse with her one after another till 03.30 a.m. of the next day. When the victim tried to escape from the place and made noise, A1 has assaulted the victim and the other accused threatened her with dire consequences. Soon after the occurrence, the victim lodged complaint, the occurrence took place on 27.01.2006 at 7.00 p.m. to on the next day 28.01.2006 at 3.30 a.m and the victim after reaching the home informed her parents and villagers. Thereafter on the same day i.e. on 28.01.2006 at 2.00 p.m. complaint was lodged. There is no delay and even the interregnum period of hours was properly explained by the victim. Even though, the witnesses have turned hostile during cross examination, they have supported the case of the prosecution during chief examination. The victim/P.W.1 has also supported the case of the prosecution during chief examination and narrated the offence committed by the accused in the complaint itself and the statement recorded under Section 164 before the Magistrate/P.W.6. Therefore, on the whole, prosecution has proved its case beyond reasonable doubt and there is no reason to interfere with the judgment of conviction recorded by the trial Court.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 It is seen that the appellants were charged for the offence punishable under Section 4 of Tamilnadu Prevention of Women Harassment Act and Sections 376(2)(g) and 506(1) of IPC, for committing gang rape on the victim/P.W.1. A1 being employer of the victim/P.W.1 took her to a place, where the other four accused were already waiting and the accused removed her dress and they all committed gang rape on her by having forcible

sexual intercourse with her one after another till 03.30 a.m. of the next day. When the victim tried to escape from the place and made noise, A1 has assaulted the victim and the other accused threatened her with dire consequences. Soon after the occurrence, the victim after reaching the home revealed the occurrence to P.Ws.2 & 3 and thereafter lodged complaint on the very same day i.e. the occurrence took place on 27.01.2006 at 7.00 p.m. till the next day 28.01.2006 at 3.30 a.m and complaint was lodged on 28.01.2006 at 2.00 p.m. There is no delay and even the interregnum period of hours was properly explained by the victim.

11 Even though, the witnesses have turned hostile during cross examination, they have supported the case of the prosecution during chief examination. The victim/P.W.1 has also supported the case of the prosecution during chief examination and narrated the offence committed by the accused in the complaint itself and the statement recorded under Section 164 before the Magistrate/P.W.6. Prosecution has rightly put a suggestion that they were all after getting money from the accused, have turned hostile and the same was also proved while cross examination of the prosecution witnesses by the respondent police. Identification parade is concerned, P.W.1 has clearly stated in her evidence that A1 is the owner of the Company, in which she was working and she found four more persons, even though it is night hours, there was a light at the time of committing offence all the accused talked with each other by mentioning their names and hence she has clearly identified the accused during identification parade conducted by P.W.7. Further P.Ws.2 & 3 in their evidence during chief examination have clearly stated that soon after the occurrence and reaching the home, P.W.1 reveal the entire facts to them and thereafter they informed the same to the villagers and on suggestion made by the villagers, lodged the complaint. P.Ws.4 & 5 are the witness for mahazar and recovery and they also supported the case of the prosecution. The Doctor/P.W.8, who examined the victim on the next day of occurrence, had clearly stated that there is possibility of having sexual intercourse at several times with several persons and the victim lost her virgin and also there is aberrations on the private part of the victim, which clearly proved the offence committed by the accused. On reading of evidence of P.Ws.1 to 5 during chief examination and the medical evidence and also the evidence of P.Ws.8 to 10 & 12, it reveal that even though, the witnesses have turned hostile during cross examination, has fully supported the case of the prosecution at the beginning. The trial Court has discussed elaborately the evidence of the prosecution witnesses and rightly convicted the appellants, which is being well founded. This Court does not find any reason to take a different view on the conviction recorded by the trial Court.

12 In the result, these criminal appeals stand dismissed as devoid of merit and substance. Trial Court is directed to secure all the appellants immediately to serve remaining period of imprisonment, if any.
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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District-cum-Sessions Judge III,
Tiruppathur, Vellore District.
2. The Judicial Magistrate, Vaniyambadi, Vellore Dist.
3. The Chief Judicial Magistrate
Vellore.
4. The Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District.
5. The Superintendent,
Central Prison,
Vellore.
6. The Public Prosecutor,
High Court, Madras.

Copy to:-

The Secretary,
Tamil Nadu Legal Aid Services,
High Court, Madras - 104.

+lcc to Mr.P.Narayanamoorthy, Advocate, SR.No.73481
+lcc to Mr.K.B.Arul, Advocate, SR.No.74546
+lcc to Mr.A.M.Rahamath Ali Advocate sr73216 dt 07/02/2020

Cr1.A.Nos.449 & 840 of 2012

Kak(05/11/2019)
aa07/02/2020