

BAIL SLIP

Mr.Muruganandham @ Anand, Accused in S.C.No.26 of 2012 on the file of the Principal District and Sessions Judge, Ariyalur was enlarged on bail in MP.No.1 of 2012 in Crl.Appeal No.538 of 2012 vide order dated 02.11.2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.538 OF 2012

Muruganandham @ Anand ... Appellant/Sole accused

-Vs-

The State rep. by
The Inspector of Police,
Vikkramangalam Police Station,
Ariyalur District.
(Crime No.76 of 2009)

... Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C, praying to set aside the judgment dated 31.07.2012 passed in S.C.No.26 of 2012 passed by the learned Principal District and Sessions Judge, Ariyalur.

For Appellant : Mr.M.Selvam
Mr.S.Selvathirumurugan
Legal Aid Counsel

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

JUDGMENT

This Criminal appeal has been filed to set aside the judgment dated 31.07.2012 passed in S.C.No.26 of 2012 by the learned Principal District and Sessions Judge, Ariyalur.

2. The respondent police registered a case against the appellant herein for the offence under Section 376 of IPC and after completing investigation, laid a charge sheet against the accused before the learned Sessions Judge, Mahila Court, Perambalur and the same was taken on file in SC.No.22 of 2010. The learned Sessions Judge, after completing the formalities, framed charge against the appellant for the offence under Section 376(ii) of IPC.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 12 witnesses were examined and marked 7 documents. After completing evidence, incriminating circumstances culled out from the prosecution witnesses was put before the accused, he denied as false. On the side of the defence, no oral and documentary evidence was produced. The learned Sessions Judge, after hearing the arguments advanced on either side and considering the entire facts, found that the appellant was not guilty for the offence under Section 376(ii) of IPC, however, he was convicted for the offence under Section 354 of IPC and sentenced him to undergo 2 years Rigorous Imprisonment and to pay a compensation amount of Rs.15,000/- to the victim child through her mother and guardian/PW-1, by judgment dated 31.07.2012. There against, the present appeal has been preferred by the convict before this Court.

4. The learned counsel for the appellant would submit that the doctor, who has opined that when the girl is riding a cycle, there is a possibility of tearing hymen and also he would submit that the appellant is the neighbour, who used to play with her. If anything was happened, the mother would have filed the complaint immediately, whereas, she has not given the complaint on the same day. There is a delay in preferring the complaint. There is a previous enmity between the appellant and PW-1 and in order to take vengeance, she has foisted a false case against the appellant. There is no eye witness and there is no external injury. There is no possibility of alleged offence as framed by the trial Court. Though the Trial Court acquitted the accused for the offence under Section 376 (2) IPC, convicted him for the offence under Section 354 of IPC. In the absence of any eye-witness or any injury, the conviction of the appellant is not valid. The Trial Court failed to consider the enmity between the appellant and PW-1 and wrongly convicted the appellant for the offence under Section 354 of IPC, which warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the victim girl was aged about 2 ½ years at the time of occurrence and she was examined as PW-11. She has clearly spoken about the occurrence. Soon after the occurrence, since the appellant/accused threatened the victim girl, she has not informed the same. Subsequently, when the victim girl was taking bath, she felt pain in her private part and thereafter, she informed PW-1 about the occurrence. In this case, there may not be any eye-witness, the evidence of doctor clearly shows that there is a injury. Therefore, the prosecution has proved its case beyond reasonable doubts. There is no reason to interfere with the judgment of the Court below.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the entire materials available on records.

7. The case of the prosecution is that the appellant is alleged to have committed sexual assault on the victim girl, aged 2½ years. The mother of the victim girl was examined as PW-1, she corroborated the evidence of the victim girl/PW-11. The evidence of PW-1 clearly proved the allegations against the appellant. Though charges are framed under Section 376(2) of IPC, the date of offence is 19.04.2009. As per the evidence of PW-1, the appellant has not penetrated his private part into the victim, whereas, the appellant has inserted his finger in the private part of the victim girl. Before the amendment in the year 2013, insertion of the fingers does not fall under Section 376 of IPC. Therefore, the Trial Court has come to the conclusion that though the prosecution has proved its case, however, interpreting the legal provisions matches with the factual matrix of the case, found that the offence falls under Section 356 of IPC.

8. On reading of the entire evidence of PWs-1, 6, 7, 8 and 11, this Court finds that the prosecution has proved its case beyond reasonable doubts and the Trial Court has rightly appreciated the entire evidence and convicted the appellant/accused for the offence under Section 354 of IPC. There is no sound ground to interfere with the judgment of the trial Court. There is no merit in the appeal and the same is liable to be dismissed.

9. Accordingly, this Criminal Appeal shall stand dismissed. The judgment dated 31.07.2012 in S.C.No.26 of 2012 passed by the learned Principal District and Sessions Judge, Ariyalur, is

hereby confirmed. The Trial Court is directed to secure the accused to undergo remaining period of sentence, if any. The counsel for the appellant/accused on record, who was appointed by the Tamil Nadu State Legal Services Authority, Chennai from the Legal Aid Panel is entitled for the fees as per the rule.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Principal District and Sessions Judge,
Ariyalur.
2. The Inspector of Police,
Vikkramangalam Police Station,
Ariyalur District.
3. The Public Prosecutor,
High Court,
Chennai-104.
4. The Secretary,
Tamil Nadu State Legal Services Authority,
Chennai.

+1cc to Mr.S.Selvathirumurugan, Advocate, S.R.No.76014

+1cc to Mr.M.Selvam, Advocate, S.R.No.75830

Crl.A.No.538 of 2012

SS(CO)
CS/09/01/2020

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