

Bail Slip

The Appellant herein/Accused namely Umapathy, S/o.Kannairam (in S.C.No.78 of 2010 on the file of the Sessions Judge, Mahila Court, Chengalpattu) was directed to be released on bail by order of this Court dated 30.10.2012 and made in CrI.MP.No.1 of 2012 in CrI.A.No.650 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.650 of 2012

Umapathy

...Appellant/Accused

-Vs-

The State rep. by
The Inspector of Police,
S10, Pallikaranai Police Station,
Chennai - 600 100.
(Cr.No.158/2009

...Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of Cr.P.C. praying to set aside the judgment of conviction dated 31.07.2012 made in S.C.No.78 of 2010 made by the learned Sessions Judge, Mahila Court, Chengalpattu.

For Appellant : Mr.S.Selvathirumurugan
Legal Aid Counsel

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

JUDGMENT

This criminal appeal has been directed against the judgment of conviction made by the learned Sessions Judge, Mahila Court, Chengalpattu, in S.C.No.78 of 2010, dated 31.07.2012.

2 The respondent police registered a case against the appellant for the offence under Section 376(2)(f) of IPC in Crime No.158 of 2009 and after investigation laid a charge sheet before the learned Judicial Magistrate, Alandur, which was taken on file in P.R.C.No.104 of 2009 and since the offence charged against the appellant is triable only by the Court of Sessions,

the learned Magistrate committed the case to the learned Principal District and Sessions Judge, Chengalpattu, which was taken on file in S.C.No.78 of 2010 and the same was made over to the learned Sessions Judge, Mahila Court, Chengalpattu, for disposal.

3 Before the trial Court, in order to prove the case of the prosecution, P.Ws.1 to 6 were examined and Exs.P1 to 14 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, he denied as false. On the side of the defence no one was examined and no document was marked.

4 The learned Sessions Judge, after trial, found the accused guilty for the offence punishable under Section 376(2)(f) of IPC and by judgment dated 31.07.2012, convicted the appellant and sentenced him to undergo rigorous imprisonment for a period of ten years with fine of Rs.30,000/-, in default, to undergo rigorous imprisonment for a period of one year and ordered to pay Rs.25,000/- out of the fine amount. Aggrieved against the said judgment of conviction, the accused has filed the present criminal appeal before this Court.

5 According to learned legal aid counsel appearing on behalf of the appellant, the appellant has not committed any offence as alleged by the prosecution and prosecution has failed to establish its case beyond reasonable doubt. The trial Court has framed charges only for the offence under Section 376(f) and there is no such penal code, which itself shows that the learned trial Judge has not applied his mind. The evidence of P.Ws.1 & 2 are contradictory to the medical evidence Ex.P2 and clearly proves that the present case against the appellant is falsely foisted one. The witness to the confession and Seizure Mahazar Ex.P9 & P10 were not examined by the prosecution before the trial Court. The Doctor/P.W.4, who examined the victim child, had clearly deposed that there is no internal or external injuries found on the body of the child and his evidence had not supported the case of the prosecution. The learned counsel would further submit that in fact there was dispute between the appellant and the defacto complainant with regard to chit transaction and instead of paying the debt, the defacto complainant has lodged false complaint against the appellant. P.W.5 has stated that semen was found on the material object 1, which was wore by the victim at the time of occurrence and issued a certificate Ex.P5. The victim child/P.W.3 had deposed that respondent police had given chocolate and made her ready to depose against the appellant, which shows that the respondent

police had falsely implicated the petitioner in this case. There was material contradiction with regard to the writing of the complaint Ex.P1. The trial Court has failed to consider the above facts and mechanically convicted the petitioner, which warrants interference of this Court.

6 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that P.W.1 is father and P.W.2 is mother of victim child/P.W.3, who is 4 years at the time of occurrence. On 07.09.2009 at about 11.00 a.m. while the victim child was playing on the street, the appellant/accused given bread to hear and taken the child to his house and committed offence, which comes under 376(2)(f) of IPC. Immediately after the occurrence the victim child returned her house with weeping and when P.W.2 asked the child, she narrated the act of the appellant and P.W.2 lodged complaint. Evidence of P.Ws.1 2 corroborated with each other and also the complaint. P.W.5, who examined the material objects, has found semen, which belongs to human being. As rightly observed by the trial Court, it is not possible that without any occurrence as denied by the appellant, semen could not be on the inner wear of the child. P.W.1 had lodged complaint before the respondent police and the respondent police by following the procedures had filed charge sheet and the learned trial Judge has also rightly appreciated the evidence of prosecution and convicted the appellant, which does not call for any interference.

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

8 On reading of the entire allegations made against the appellant, it would reveal that cases of this nature, the Court cannot expect any eye witness and the evidence of the victim itself would suffice to convict the accused. Evidence of P.Ws.1 to 3 are very clear and are corroborated with each other and also the complaint/Ex.P1. The victim child has also clearly deposed the act of the appellants on the date of occurrence, which could not be discarded and there is no reason for the same. P.W.5 has clearly stated that there was semen found on the inner wear of the child, which belong to human being. Further the contention of the appellant, since there was dispute with regard to chit transaction and the defacto complainant instead of paying the same had foisted false case against the appellant, is not acceptable, because no parent would go to the extent of spoiling their child's future for the reason stated by the appellant. The minor contradictions pointed out by the learned counsel for the appellant would not affect the root of the case, which was clearly proved. Further it was contended by the

learned counsel that the victim child, during cross examination has stated that police officials had given chocolate to her, but, the fact remains that the child during chief examination has clearly narrated the entire incident and P.W.2, the mother of the victim child has also corroborated the same. This Court is of the view that prosecution has clearly proved its case beyond reasonable doubt this Court does not find any special circumstances to take a different view in the present case on hand. There is no iota of merit and substance in the present criminal appeal.

9 In the result, the criminal appeal stands dismissed as devoid of merit and substance. Trial Court is directed to secure the appellant/accused immediately to serve remaining period of imprisonment, if any.

10 While parting with the case, I appreciate the services rendered by Mr.S.Selvathirumurugan, learned counsel who appeared on behalf of the appellant/accused, as Legal Aid Counsel. The learned counsel on record for the appellant is entitled for remuneration as per rules.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge, Mahila Court, Chengalpattu.
- 2.The Judicial Magistrate, Alandur.
- 3.-Do-Thro' The Chief Judicial Magistrate, Chengalpattu.
- 4.The Superintendent, Central Prison, Puzhal, Chennai.
- 5.The Inspector of Police, S10, Pallikaranai Police Station, Chennai - 600 100.
- 6.The Public Prosecutor, High Court of Madras.

Copy To: The Section Officer, Criminal Section,
High Court of Madras, Chennai -104.

+1 cc to M/s.S.Selvathirumurugan, Advocate Sr.No.73827

AKM/08.11.19/4P-9C /

CrI.A.Nos.650 of 2012