

Bail Slip

Appellant in CrI.A 79 of 2019/Accused namely Elumalai S/O Muthukrishnan was directed to be released on bail as per order of this Court dated 30.11.2015 in CrI.M.P.No.1264 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2019

PRONOUNCED ON : 05.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.A.No.79 of 2016

Elumalai,
S/o.Muthukrishnan,
Konjumangalam Village,
Vanur Taluk,
Villupuram District.

Appellant/Accused

Vs.

State represented by
Inspector of Police,
All Women Police Station,
Kottakuppam,
Villupuram District.
Cr.No.2/2012

Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment and order dated 30.11.2015 passed in S.C.No.319 of 2014 on the file of the Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

For Appellant : Dr.G.Krishnamurthy

For Respondent : Mr.G.Ramar
Government Advocate
(CrI. Side)

J U D G M E N T

This criminal appeal has been preferred seeking to set aside the judgment and order dated 30.11.2015 passed in S.C.No.319 of 2014 on the file of the Mahalir Neethi Mandram (Fast Track Mahila Court), Villupuram.

2 The facts in brief leading to the filing of this criminal appeal are as under:

2.1 It is the case of the prosecution that the appellant who was aged about forty years, deflowered the victim girl X (PW1), aged about 18 years, after sedating her; after she realized that she was ravished, the appellant intimidated her that he would liquidate her family members and sexually abused her thrice; X (PW1) became pregnant, but, did not have the courage to reveal it; after about five months, X (PW1) started feeling the presence of foetus in her abdomen, but, complained to her mother viz., Parimala (PW3) that she was suffering from stomach ache; her parents took her to JIPMER Hospital in Puduchery; while Parimala (PW3) was standing in queue for getting O.P. ticket, X developed labour pain and she went to the toilet nearby and ejected the foetus with the help of two women who were there; when Parimala (PW3) returned with the O.P. ticket, she was shocked to learn of this; fearing societal shame, X (PW1) and her mother Parimala (PW3) abandoned the foetus and went to Rajiv Gandhi Government General Hospital in Chennai, for treatment. When things had come to such a pass, police complaint became inevitable.

2.2 Iyyanar (PW2), father of the victim girl X (PW1), lodged a written complaint (Ex-P1), based on which, Amalarasu (PW13), Sub-Inspector of Police, registered a case in A.W.P.S.Crime No.2 of 2012 on 11.04.2012 against the appellant, under Sections 417, 506(I) IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1968 and prepared the printed FIR (Ex-P11).

2.3 The Sub-Inspector of Police (PW13) went to the place of occurrence viz., the house of the victim girl X (PW1) and prepared the observation Mahazar (Ex-P12) and Rough Sketch (Ex-P13). She recorded the statements of the victim girl X (PW1), her parents (PW2 & PW3), neighbours and others. Sensing that he would be arrested, the appellant obtained anticipatory bail and thus, averted arrest. The Sub-Inspector of Police (PW13) gave a requisition to the Judicial Magistrate, Vanur, for sending the victim girl X (PW1) and the appellant for medical examination and also gave necessary requisition for DNA profiling of the appellant, the victim girl X (PW1) and the foetus.

2.4 The investigation was continued by Pranvindeney Sabeen (PW14), who examined the doctors who had treated the victim girl X (PW1) and also obtained various reports. On her transfer, the investigation was taken over by Chitra (PW15), who completed the investigation and filed final report in P.R.C.No.14 of 2014 under Sections 376, 417 and 506 (I) IPC before the District Munsif-cum-Judicial Magistrate, Vanur, against the appellant.

2.5 On the appearance of the appellant, the documents relied upon by the prosecution were furnished to him under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.319 of 2014 and was made over to the Mahila Court (Sessions Level), Villupuram, for trial.

2.6 The Trial Court framed charges under Sections 376, 417 and 506 (I) IPC against the appellant. When questioned, the appellant pleaded "not guilty".

2.7 To prove the case, the prosecution examined fifteen witnesses and marked nineteen exhibits.

2.8 When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. On behalf of the appellant, no witness was examined nor any document marked.

2.9 After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 30.11.2015, in S.C.No.319 of 2014 has convicted and sentenced the appellant as follows:

Provision under which convicted	Sentence
376 IPC	Seven years rigorous imprisonment and fine of Rs.1,000/-, in default to undergo three months simple imprisonment.
417 IPC	One year rigorous imprisonment and fine of Rs.500/-, in default to undergo one month simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.10 Challenging the conviction and sentence, the appellant is before this Court. Suspension of sentence and bail were granted by this Court in Crl.M.P.No.1264 of 2016 in Crl.A.No.79 of 2016 on 10.03.2016.

3 Heard Dr.G.Krishnamurthy, learned counsel appearing for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent/State.

4 Dr.G.Krishnamurthy, learned counsel appearing for the appellant contended that the prosecution had failed to prove the charge of rape, inasmuch as the appellant and the victim girl X (PW1) had only consensual sex; the victim girl X (PW1) was not a minor and was 18 years of age at the time of incident. He further contended that there are improvements galore in the evidence of the victim girl X (PW1) and therefore, her testimony deserves to be rejected.

5 Per contra, Mr.G.Ramar, learned Government Advocate (Crl.Side) appearing for the respondent/State refuted the contentions put forth by the learned counsel for the appellant.

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

7 The victim girl X (PW1) had hardly crossed 18 years when she became pregnant sometime in August 2011. Iyyanar (PW2), father of the victim girl X (PW1), was a tailor in the village. The economic background of the victim girl was obviously poor. The appellant was forty one years old, at the time of the incident and hailed from the same village. The appellant's mother was the Panchayat President of the village and the family wielded both political and economic power in that area. This should be borne in mind, while appreciating the evidence of the victim girl X (PW1) and the alleged contradictions in her testimony.

8 Before the Court, in her evidence, the victim girl X has stated that she knows the appellant; the appellant's mother was the Panchayat President; she (X) was studying II year B.Sc., in the local private Arts and Science College; her father was a tailor; the appellant would frequently come to her house to see her father and her father would accompany him for political work; on the date of the incident, her parents were not at home and at that time, she was suffering from high fever; the appellant came home and gave a tablet saying that her father had sent it for subsiding the fever; she consumed that tablet; soon, she became dizzy; a little later, when she regained consciousness, she found that the appellant had ravished her; when she berated the appellant, he told her that her father has so much trust in him that he will not believe her and further, threatened her that he would eliminate her father and brother; it was election time then; in this way, he intimidated her and had sex with her thrice; fearing him, she did not reveal this to

her parents; she missed her menses soon and after about five months, she started feeling vibrations in her belly; when she questioned the appellant, he simply told her that he will establish that he was impotent and he will put the blame on her own brother; she developed pain in the abdomen region and when she told this to her parents, her mother Parimala (PW3) took her to JIPMER Hospital, Puduchery; she asked her mother to leave her in the toilet; her mother left her in the toilet and went to the counter to obtain O.P ticket; in the toilet, she developed labour pain and ejected the foetus; some women who helped her in the delivery informed her mother of the matter; JIPMER being Government Hospital, they feared that a case may be registered against them and so, they abandoned the foetus and came to Rajiv Gandhi Government General Hospital, Chennai; she was admitted in the said hospital and after she was shifted to the ward, she disclosed to her parents that it was the appellant who had impregnated her.

9 Now, coming to the alleged contradictions canvassed by Dr.G.Krishnamurthy, learned counsel for the appellant, it is seen that the complaint in this case was given by Iyyanar (PW2), father of the victim girl X (PW1), based on whatever limited information her daughter had given to him at the hospital. Initially, the police had not even registered a case under Section 376 IPC. Instead, the case was registered for cheating under Section 417 IPC. The reason for this is not far to seek. As stated above, the family of the appellant was powerful locally, his mother being the leader of a prominent political party in the State and she was also the Panchayat President. The appellant was 41 years at the time of the incident which has been established beyond cavil. The appellant was subjected to medical examination and at that time he himself has given his age as 41 years. Even in the charge that was framed against him, his age has been shown as 41 years. The appellant has not refuted that fact even in his statement under Section 313 Cr.P.C. The medical report (Ex-P17) reads as under:

"I am to conclude from all the above findings that there is nothing to suggest that the male examined is not capable of performing sex."

10 After the victim girl X (PW1) and her mother Parimala (PW3) abandoned the foetus in the JIPMER Hospital on 02.04.2012, a case in Crime No.148 of 2012, Dhanvanthri Nagar Police Station, Puduchery, was registered for the offence under Section 318 IPC, against the victim girl X (PW1). Dhanvanthri Nagar Police seized the foetus and sent the same to the JIPMER Hospital for postmortem. Dr.Kushakumar Shaha (PW11) conducted autopsy on the foetus on 16.04.2012 and gave the following opinion in the postmortem certificate (Ex-P7):

"A live born foetus of around 10 months of Intra Uterine Age. Cause of death is due to shock from fetoplacental haemorrhage and complication thereof."

11. The doctor who did the postmortem preserved the femur bone of the foetus and sent the same to the Kotakuppam Police Station in Tamil Nadu, where, the investigation in the present case was being conducted. The Sub-Inspector of Police (PW13) gave requisition to the Judicial Magistrate, Vanur, to send the victim girl X (PW1), the appellant and the femur bone of the foetus to the Tamil Nadu Forensic Science Department for DNA profiling. On the orders of the Judicial Magistrate, Vanur, DNA profiling of the victim girl X, the appellant and the femur bone of the foetus was conducted by Dr. Lakshmi Subramanian (PW12) at the Tamil Nadu Forensic Sciences Laboratory. Dr. Lakshmi Subramanian (PW12) in her evidence as well in the DNA report (Ex-P10), has stated as follows:

"Conclusion:

From the DNA typing results of the above samples, it is found that

(i) the bones (of ref 2) belong to a human male child.

(ii) Mr. M. Elumalai is the biological father of the male child to whom the bones (of ref 2) belong."

12 Now, coming to the cross-examination of the victim girl X (PW1), though the improvements in her evidence have been elicited, no suggestion was put to her by the appellant that he had consensual sex with her. Instead, it was suggested to the victim girl X (PW1) that she has foisted a case on the instigation of some persons, which suggestion, she denied. Even when the appellant was examined by the Trial Court under Section 313 Cr.P.C., he did not take this stand. Instead, his was a case of total denial. Thus, on the conspectus of the evidence on record, this Court has no reason to disbelieve the testimony of the victim girl X (PW1) and acquit the accused.

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

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Tindivanam, Villupuram.

2.The Chief Judicial Magistrate,
Villupuram.

3. The Additional Sessions Judge,
The Mahalir Neethi Mandram,
(Fast Track Mahila Court),
Villupuram.

4. The Inspector of Police,
All Women Police Station,
Kottakuppam,
Villupuram District.

5.The Superintendent,
Central Prison,
Cuddalore.

6.The Inspector of Police,
Cantonment Police Station,
Tiruchirappalli.

7. The Public Prosecutor,
Madras High Court,
Chennai - 104.

+1cc t D.G.Krishnamoorthy, Advocate Sr.56270

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srg 30/07/2019