



BAIL SLIP

The Petitioners/Appellant namely 1. prakash, S/o. Selvaraj, 2. Dhanapal, S/o. Rajendran, 3, Mohanraj, S/o. Manivanan, were released on bail vide order dated 12.04.2011 made in MP(MD) No.1/2011 in CRL A(MD)No.104 of 2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.A(MD)No.104 of 2011

1. Prakash
2. Dhanapal
3. Mohanraj

... Appellants/Accused No.1 to 3

Vs

State through,
The Inspector of Police,
Velayuthampalayam Police Station,
Karur,
(In Crime No.249 of 2010) ... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., against Judgment and Sentence imposed in S.C.No.92 of 2010 on the file of the Additional Assistant Sessions Judge cum Additional Sub Judge, Karur, dated 14.03.2011 by sentencing the appellants under Section 376(2)(g) for a period of 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- each and in default to undergo six months rigorous imprisonment.

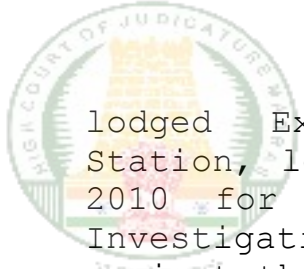
For Appellants : Mr.A.N.Ramanathan

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellants were convicted for the offence under Section 376(2)(g) and sentenced to ten years rigorous imprisonment and levied with fine, vide Judgment dated 14.03.2011 in S.C.No.92 of 2010 on the file of the Additional Assistant and Sessions Judge, Karur.

2. The case of the prosecution is that on 21.03.2010, at about 05.00 p.m., near Kattipalayam TNPL water pump house, the appellants subjected the victim to gang rape. They also caused hurt to the husband of the victim. In this regard, the victim



lodged Ex.P1-Complaint before the Velayuthampalayam Police Station, leading to registration of Ex.P12-FIR in Crime No.249 of 2010 for the offences under Sections 376 and 307 of IPC. Investigation was taken up and final report came to be laid against the appellants before the Judicial Magistrate No.2, Karur. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.19 of 2010. The case was made over to the Additional Assistant and Sessions Judge, Karur for trial in S.C.No.92 of 2010. Charges were framed against the appellants for the offences under Sections 376(2)(g), 324 and 307 of IPC. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Ex.P1 to Ex.P22 and M.O.1 to M.O.6. On the side of the accused, no evidence was adduced. The learned trial Judge, after a consideration of the evidence on record, came to the conclusion that the prosecution has established the charge under Section 376 (2)(g) of IPC against the accused beyond reasonable doubt and convicted and sentenced them for the said charge. The appellants were however acquitted in respect of the offences under Sections 324 and 307 of IPC. Challenging the same, this appeal came to be filed.

3. Heard the learned counsel appearing for the appellants and the learned Government Advocate appearing for the prosecution.

4. I carefully went through the evidence on record.

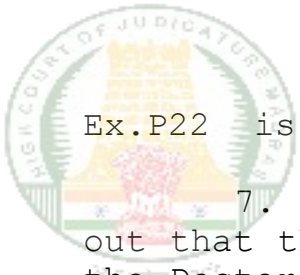
5. In support of the charge, the prosecution examined not only the victim but also her husband. No doubt, the testimony of the victim and her husband supported the prosecution case in toto. However, the question that arises for consideration is whether the said testimony is to be believed. I went through Ex.P1. After describing the occurrence, the victim states that the accused ran towards Kattipalayam. She would further claim that they went after them and enquired the people and came to know about the names of the accused. In the FIR, the full particulars of the accused are mentioned. Their age, their father's age and their addresses have also been given. FIR reached the Court on the very next day that is 22.03.2010 at about 10.00 a.m., The distance between the occurrence spot and the police station is about three kilometres. The occurrence is said to have taken place at around 05.00 p.m., on 21.03.2010. FIR was registered at 07.00 p.m., itself i.e., within two hours. As already mentioned, the distance between the occurrence spot and the police station is about three kilometres. The victim alleges that she was raped by as many as three persons. During the intervening period, they have obtained full particulars about the accused also. Admittedly, the victim did not know the appellants earlier. There was absolutely no communication between them. In fact, in her evidence, she would



admit that the accused were not known to her earlier. She also admitted in the cross examination that she did not give other details of the accused such as their address. The fact that the full particulars of the appellants/accused is mentioned in column No.7 of the FIR arouses the suspicion of this Court. The third accused Thiru.Mohanraj under whom A1 and A2 were working, had filed a statement under Section 313 of Cr.P.C. He had mentioned that his relative one Krishna Moorthy is residing nearby. The said Krishna Moorthy is said to be a murder case accused. The relationship between A3-Mohanraj and the said Krishna Moorthy was under strain. A3 would point out that the said Krishna Moorthy is the person who is behind the entire case. According to the appellants, they have been doing certain civil contract works for TNPL. The construction and other materials were being pilfered and stolen. In this regard, they have lodged complaint before the Police. Since their contractors directed them to keep a close watch, they were keeping watch. They found out that P.W.1 and P.W.2 were committing theft of construction materials. They were caught during the act. But Krishna Moorthy who is inimically disturbed towards A3 came to know the same. He made the situation turn against the appellants; that is the defence of the accused. In the cross examination, a specific question was put to P.W.1 as to whether the said Krishna Moorthy came, when the complaint was being lodged; she admitted that Krishna Moorthy did come. To a specific question as to whether the names of the appellants were given only by the said Krishna Moorthy, P.W.1 feigned ignorance. In other words, she did not deny the suggestion putforth by the accused. She only stated that she did not know.

6.Since the names with full particulars of the appellant have already been mentioned in the FIR, I am of the view that no significance can be attached to the Test Identification Parade held later. What is more significant is that even though the report was lodged immediately after the so called occurrence, she was not sent for medical examination immediately. Interestingly, P.W.2-husband of the victim was sent for medical examination. But only simple injuries were found on his person. P.W.1-Victim was examined on 23.03.2010 by P.W.13. She issued Ex.P14. Ex.P14 is the accident register pertaining to the victim. Ex.P15 is the medical certificate issued by P.W.13. In Ex.P15, it has been mentioned that there was only laceration on the chest portion and near the eye of the victim. P.W.13 had stated that there was nothing to show that P.W.1 was subjected to rape. It was also mentioned that there were no injuries found on the private parts of the victim. She was said to be psychologically and physically normal. Thus, the medical evidence does not support the prosecution case. Like wise, the clothes of the victim were also

<https://hccasescourts.gov.in/hccases/> for forensic examination. The forensic report



Ex.P22 is also not in favour of the prosecution.

7. The learned counsel appearing for the appellant pointed out that the occurrence spot itself is doubtful. She had informed the Doctor who examined her that when she had gone out for fishing near the sugarcane factory, the occurrence took place. But then, the charge is that the occurrence took place in the TNPL water pump house. The distance between the sugarcane factory and the said pump house has been suggested to be about 10 kilometres. Thus, there is no clarity regarding the occurrence spot.

8. More than anything else, as rightly argued by the learned counsel appearing for the appellant, the testimony of P.W.1 and P.W.2 are inherently improbable. The couple had come to the river flowing near the pump house for fishing. Admittedly, their house was situated some four kilometres away. It was around 05.00 P.M. P.W.2 would claim that he had sent his wife back home. When P.W.1 was crossing the thatched shed, the accused are said to have carried her away and taken her into the thatched shed and committed rape on her. Admittedly, the distance between the occurrence spot namely the thatched shed and the place where P.W.2 was continuing his fishing, was hardly 30-40 feet. P.W.2 admits that he rushed to the thatched shed only after hearing the alarm raised by his wife. P.W.1 would claim that she was successively raped by all the three accused.

9. From the testimony of P.W.1 and P.W.2, one can easily come to the conclusion that the spot where the alleged crime was committed, was at a hearing distance from where, P.W.2 was standing. It is simply impossible that in fact, P.W.2 rushed to rescue of his wife, only after hearing the call. Therefore, I find it difficult to believe that only after all the three accused committed rape on her, P.W.2 heard the call of his wife. The entire version projected by P.W.1 and P.W.2 cannot be believed.

10. For all these reasons, namely,

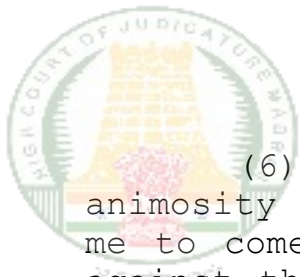
(1) mentioning the full particulars of all the three accused in the FIR.

(2) not subjecting P.W.1/victim for medical examination immediately after the occurrence.

(3) the Doctor stating that there was no injury found on the person of the victim except minor lacerations and she categorically opining that there was nothing to show that P.W.1 was subjected to forcible sexual intercourse.

(4) the forensic opinion not being adverse to the accused

(5) the inherent improbability of the version projected by P.W.1 and P.W.2.



(6) The probable defence projected by A3 about the prior animosity between him and Krishna Moorthy. All these aspects impel me to come to the conclusion that a false case has been put up against the appellants at the instance of P.W.1. The Court below seriously erred in not taking note of these aspects. It had taken the version of P.W.1 and P.W.2 as gospel truth. The impugned Judgement is set aside. The appeal is allowed. The appellants are acquitted. The fine amount, if any, paid by them shall be refunded forthwith. The bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar(Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional Assistant Sessions Judge Çum Additional Sub Judge, Karur.
2. The Judicial Magistrate No.II, Karur.
- 3.The Inspector of Police,
Velayuthampalayam Police Station,
Karur.
4. The Station Incharge,
Vishnu Kanchi Police Station,
Kancheepuram.
5. The Superintendent, Central Prison, Trichy.
6. The Officer incharge, BORSTAL SCHOOL, Karur.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



COPY TO

The Section Officer, Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.K.BALASUBRAMANI, Advocate (SR-83624[F] dated
27/08/2019)

Cr1.A (MD) No.104 of 2011
27.08.2019

AL (CO)
TR (09.06.2020) 6P 11C