



Bail Slip

The Peitioner/Accused viz., Chandrasekar @ Chandrasekaran S/o. Natarajan was directed to be released on bail vide this Court order dated 11.02.2013 and made in MP(MD).NO.1 of 2012 in CRL A (MD).No.180 of 2012.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.180 of 2012

Chandrasekar @ Chandrasekaran ... Appellant/Sole Accused

Vs

State represented by,
The Inspector of Police,
All Women Police Station,
Virudhunagar,
in Crime No.19 of 2010,
Virudhuangar District.

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to call for the records and set aside the order of conviction and sentence in S.C.No.127 of 2011 on the file of the learned Assistant Sessions Judge, Virudhunagar Judgment, dated 17.08.2012 and allow this appeal and acquit the appellant from the charges levelled against him.

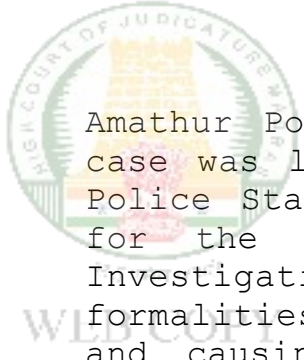
For Appellant : Mr.AK.Azagarsami

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

JUDGMENT

The appellant was convicted for the offence under Section 376(1) of IPC and sentenced to ten years rigorous imprisonment, vide Judgment dated 17.08.2012 in S.C.No.127 of 2011, on the file of the Assistant Sessions Judge, Virudhunagar.

2. The prosecution case is that on 23.09.2010, at about 02.00 p.m., the appellant herein committed forcible sexual assault on the victim/P.W.1. P.W.1 lodged Ex.P1-Complaint before the

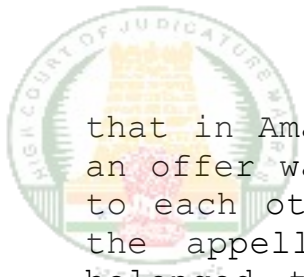


Amathur Police Station on the same day, at about 09.15 p.m. The case was later transferred to the Inspector of Police, All Women Police Station, Virudhunagar. Ex.P16-FIR in Crime No.19 of 2010 for the offence under Section 376 of IPC was registered. Investigation was taken up and after completing the usual formalities, such as, sending the victim for medical examination and causing the arrest of the accused and examining all the relevant witnesses, final report was filed against the appellant before the Judicial Magistrate No.2, Virudhunagar. The case was committed to the Sessions Court in P.R.C.No.6 of 2011. It was made over to the Assistant Sessions Judge, Virudhunagr, in S.C.No.127 of 2011. Since during the occurrence time, the appellant was said to have beaten the cheeks of the victim, charges under Section 324 as well as 376 of IPC were framed against the accused. The accused denied the charges and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Ex.P1 to Ex.P17. M.O.1 to M.O.3 were also marked. The learned trial Judge, after a detailed consideration of the evidence on record, found the accused guilty of the offence under Section 376 of IPC and sentenced him as mentioned above. Questioning the same, this appeal has been preferred.

3.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum and wanted this Court to set aside the impugned Judgment and acquit the accused of all the charges.

4.The learned Government Advocate (Crl.side) on the other hand submitted that the impugned Judgment does not warrant any interference.

5.The learned counsel appearing for the appellant took me through the evidence of P.W.1/victim and contended that there was a consensual relationship between the appellant and the victim. He pointed out that Ex.P17-Rough Sketch has not been prepared properly. The occurrence had taken place inside what is known as 'Sasitharan Garden'. The said garden was under the care and maintenance of the victim's family. The garden is enclosed on all the four sides by fencing and there was also a iron grill gate. The grill gate used to be under lock and key and the key was only with the victim's family. It has been convincingly established by the appellant's counsel that the occurrence had taken place only inside the said garden. The appellant's counsel would submit that unless the victim had herself permitted the appellant to enter, the appellant could not have entered the said place. He also pointed out that there was no injury on the private parts of the victim. P.W.1 Victim had also stated that when her mother saw the two together, she had told her that they must go to the police station to lodge a complaint. P.W.1 had admitted in her cross examination that only on the insistence of her mother, she went to the police station to lodge Ex.P1-Complaint. She also admitted



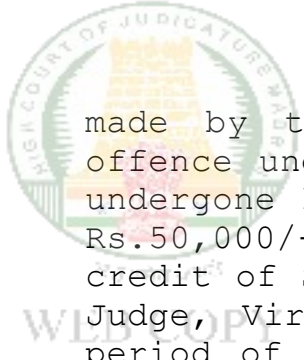
that in Amathur Police Station, a Panchayat was conducted and that an offer was made that the appellant and the victim can be married to each other. The reason for declining the said offer was that the appellant belongs to a scheduled caste, while the victim belonged to a non-SC community. The victim was aged about 22 years on the occurrence date.

6.I am therefore satisfied that there is some justification in the appellant's counsel submission that there was consensual basis in the relationship between the appellant and the victim. Therefore, I am of the view that the learned trial Judge erred in convicting the appellant for the offence under Section 376 of IPC. The conviction and sentence imposed on the appellant by the learned trial Judge for the offence under Section 376 of IPC is set aside. The Court below had framed charges not only under Section 376 of IPC, but also under Section 324 of IPC. Since the appellant was ultimately found guilty of the offence under Section 376 of IPC, the Court below chose to acquit him of the offence under Section 324 of IPC.

7.In this case, the victim had in her deposition stated that the appellant had bitten her on her right cheek. The injury caused to the victim on her right cheek is mentioned in Ex.P1. The appellant's counsel would submit that this is only by way of insertion and that in any event, it is not finding the place in the printed FIR. But then, Ex.P12, the "Wound Certificate" was issued after examining the victim. P.W.15 who examined her, had opined that there was a irregular abrasion of about 1.5 X 1 cm over right cheek. The medical examination was done on 24.09.2010 at about 6.30 p.m.

8.The learned counsel appearing for the appellant would draw my attention to the answer given by the Doctor in the cross examination. The Doctor had stated in the cross examination that she had not opined that the said injury found on the victim's right cheek was due to human bite. But I am of the view that the appellant's counsel cannot derive assistance from this answer. He has not ruled out that it is not human bite also. P.W.4 is one Karuppasamy who is from the same village. He saw the victim soon after the occurrence. He had stated that there was a wound on the right cheek of the victim. Therefore, taking into account the testimony of the victim as well as the medical evidence and also the ocular evidence of P.W.4, I have to necessarily come to the conclusion that the appellant had caused hurt to the victim. He is therefore liable to be punished for the offence under Section 323 of IPC.

9.The learned counsel appearing for the appellant stated that the appellant had already spent about ten months in prison. He also undertakes to pay Rs.50,000/-[Rupees Fifty Thousand Only] as compensation. In view of the undertaking and also the offer



made by the appellant, the sentence on the appellant for the offence under Section 323 of IPC is reduced to the period already undergone by him. The appellant is directed to deposit a sum of Rs.50,000/- [Rupees Fifty Thousand Only] as compensation to the credit of S.C.No.127 of 2011 on the file of the Assistant Sessions Judge, Virudhunagar. He shall deposit the said amount within a period of four weeks from the date of receipt of a copy of this order. Upon such deposit, the learned trial Judge shall take steps to have the compensation amount disbursed to the victim. The conviction and sentence imposed on the appellant for the offence under Section 376 of IPC is set aside. He is however found guilty of the offence under Section 323 of IPC.

10. This criminal appeal is partly allowed accordingly.

Sd/-

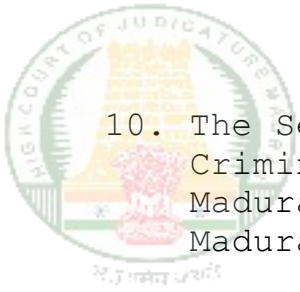
Assistant Registrar

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Sub Assistant Registrar(CS)

To

- 1.The Assistant Sessions Judge,
Virudhunagar District.
- 2.Thro'The Principal Sessions Judge,
Virudhunagar.
- 3.The Judicial Magistrate No.I,
Virudhunagar.
- 4.Thro'The Chief Judicial Magistrate, Virudhunagar.
- 5.The Superintendent, Central Prison, Madurai.
- 6.The Inspector of Police,
All Women Police Station,
Virudhunagar,
Virudhuangar District.
- 7.The Superintendent of Police,
Virudhunagar.
- 8.The District Collector, Virudhunagar.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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

+1 CC to Mr.A.K.AZAGARSAMI Advocate (SR-77057[F] dated 23/07/2019
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Cr1.A(MD)No.180 of 2012
19.07.2019

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