



BAIL SLIP

Raja Jegan, S/o.Siluvai Pitchai, M/A 33 years, Sole Accused was released on bail vide order of this Court, dated 27.01.2012 made in MP(MD)No.1 of 2012 in Crl.A (MD)No.2 of 2012.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.02 of 2012

Raja Jegan

... Appellant/Sole Accused

Vs

The State represented by,
The Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.
(Crime No.43 of 2010)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the entire records pertaining to the Judgment rendered by the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi, Thoothukudi District in S.C.No.195 of 2011 vide her Judgment dated 06.01.2012 and set aside the same and consequently acquit the appellant.

For Appellant : Mr.R.Anand

For Respondent : Mr.S.Bharathi
Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offences under Sections 376 and 506(ii) of IPC and sentenced to ten years rigorous imprisonment and five years rigorous imprisonment respectively and also levied with fine, vide Judgment dated 06.01.2012 in S.C.No.195 of 2011 on the file of the Additional Sessions Judge/Fast Track Court No.1, Thoothukudi.

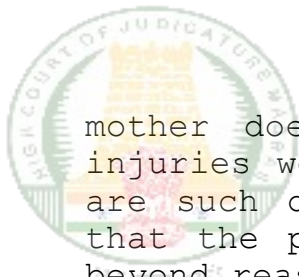
2.The prosecution case is that on 20.04.2010, at about 06.00 pm., when the victim was waiting in Thisayanvilai bus stand, the appellant induced her accompany him in his two wheeler. The appellant assured the victim that he would drop her at her village. But enroute, he took her to a lonely spot and had forcible sexual



intercourse with her. The victim lodged Ex.P1-Complaint before the Thattarmadam Police Station on 23.04.2010. Based on Ex.P1-Complaint, Ex.P11-FIR in Crime No.43 of 2010 was registered for the offences 376 and 506(ii) of IPC. Investigation was taken up and final report came to be laid against the appellant for the aforesaid offences before the Judicial Magistrate, Sathankulam. The case was committed to the Sessions Court in P.R.C.No.33 of 2011. The case was made over to the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi for trial in S.C.No.195 of 2011. Charges were framed against the appellant for these two offences. The appellant denied the charges and claimed to be tried. The prosecution examined 17 witnesses and marked Ex.P1 to Ex.P15. M.O.1 and M.O.2 were also marked. The two wheeler, on which, the appellant had taken the victim, was produced, but not marked. The learned trial Judge, after a detailed consideration of the evidence on record, convicted the appellant under both the provisions and sentenced him as mentioned above. Challenging the same, this appeal came to be filed.

3.P.W.1 is the victim. P.W.2 is the mother. P.W.1 had described as to what happened in her chief examination. Her testimony could not at all be shaken in the cross examination. In fact, the cross examination was conducted in such a manner as to suggest that there was an implicit consent. In fact, one question posed to the victim was that the appellant was known to her and that as a result, her name was linked to the appellant by the villagers. The victim answered the said question in the affirmative. The mother of the victim also deposed that on the occurrence date, the victim came home late and that she had reported to her mother that the accused had sexual intercourse with her. Thus, the testimony of the mother fully corroborates the testimony of the victim. The victim was a student of the tailoring class. She had studied upto 8th standard. P.W.5 was the one who was running the tailoring class. He clearly stated that there was an intimacy between the accused and the victim. Interestingly, P.W.5 was not cross examined. P.W.6 is a Mahazar Witness. P.W.7 is the Radiologist. He issued Ex.P3 who had opined that the victim could be aged anywhere between 16 and 18. P.W.9 is the Doctor who examined the accused and he had issued the potency certificate for the accused. P.W.10 produced the victim before the in-charge Magistrate. P.W.11 is the Doctor who examined the victim. P.W.12 produced the accused before the Magistrate and got him remanded. P.W.14 had purchased the two wheeler in question from the accused. P.W.15 was the head constable who registered the FIR. P.W.16 conducted part of the investigation. P.W.17 completed the remaining part of the investigation and filed final report.

4.It is true that the Doctor who examined the victim, stated that no injuries were found on the person of the victim. It is also true that there was a delay of some three days in lodging the FIR. The father of the victim was not examined. The testimony of the



mother does look a bit doubtful, because, she had claimed that injuries were found on the body of the victim. Even though there are such deficiencies in the prosecution case, I am of the view that the prosecution had established its case against the accused beyond reasonable doubt. The victim must have been aged just around 16 years. Of-course, she had claimed that she was aged 14 years before the Doctor who examined her initially. Even if we assume that the victim was aged above 16 on the occurrence date, that would still not absolve the appellant. The victim had clearly and categorically stated that she did not give her consent for having sexual intercourse with the appellant. It is the admitted case of the appellant that he was a married person and he was having two children on the occurrence date. In fact, that is the specific question posed to the victim in her cross examination by the learned counsel for the appellant. The accused was aged around 32 years when the occurrence took place. Even by conservative estimate, the victim was half the age of the appellant. When the accused was a married person having two children, it is simply improbable that a young girl of impressionable age can be said to have given any consent. No motive has been ascribed by the accused. In fact, even in the cross examination under Section 313 of Cr.P.C., the accused merely characterised the incriminating circumstances as false. He has not come out with any defence version. There is simply no reason as to why a false complaint should have been given against the accused. Merely because, there was no injury on the person of the victim that does not mean, there was a consensual sexual intercourse between the two. Merely because, there was a delay in lodging the FIR that would still not mean that the victim had come out with any false complaint. It has been consistently held that insistence on corroboration would amount to shaming the victim. The accused has not come out with any specific defence as to why the prosecutrix should falsely implicate him. Therefore, looked at from any angle, I concur with the reasons given by the learned trial Judge for finding the accused guilty and for coming to the conclusion that the prosecution had established its case beyond reasonable doubt.

5. Having regard to the evidence on record, the learned counsel appearing for the appellant, on instructions, submitted that he would not challenge the conviction and that, he would only plead for modification and reduction in the matter of sentence. Since the appellant had admitted his guilt through his counsel before this Court and since he is having a family to support, even though, the crime committed by him is rather grave, I am inclined to reduce the sentence of imprisonment in respect of the offence under Section 376 of IPC from 10 years to five years rigorous imprisonment. The sentence of imprisonment for the offence under Section 506(ii) of IPC stands reduced from five years to one year rigorous imprisonment. Both the sentences will run concurrently. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C.



6. With this modification in the matter of sentence, this criminal appeal stands partly allowed.

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Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The Additional Sessions Judge (Fast Track Court No.1),
Thoothukudi District.
2. The Judicial Magistrate, Sathankulam.
3. The Superintendent Central Prison, Palayamkottai.
4. The Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
6. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

Cr1.A.(MD)No.02 of 2012
09.08.2019

VB(21.02.2020) 4P 8C