



Bail Slip

Appellant / Accused namely Saravanan, aged about 30 years S/O Rajamanickam was directed to be released on bail as per order of this court dated 27.09.2011 and made in M.P.(MD)No.1 of 2011 in Crl.A(MD)No.290 of 2011 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. A. (MD)No.290 of 2011

Saravanan

... Appellant/Single Accused

Vs.

The State rep. by,
The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.
(Crime No.222 of 2004)

... Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 of Cr.P.C., against the Judgment and conviction passed in S.C. No.81 of 2006 dated 25.07.2011 by the learned Assistant Sessions Judge, Sivagangai District for the offences under Sections 376 and 506(ii) of I.P.C., wherein the appellant was sentenced to undergo 10 years Rigorous Imprisonment and a fine of Rs.1,000/- in default to undergo six months Simple Imprisonment for the offence under Section 376 of I.P.C. and 1 year Rigorous Imprisonment for the offence under Section 506(ii) of I.P.C.

For Appellant : Mr.V.Kannan

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



JUDGMENT

The appellant was convicted for the offence under Sections 376 and 506(ii) of I.P.C. and sentenced to 10 years Rigorous Imprisonment and one year Rigorous Imprisonment respectively, vide Judgment dated 25.07.2011 in S.C.No.81 of 2006 on the file of the learned Assistant Sessions Judge, Sivagangai. Questioning the same, this Criminal Appeal has been filed.

2. Heard the learned counsel on either side.

3. The case of the prosecution is that on 23.08.2004 at about 4.00 p.m., the appellant took the victim to a lonely place and committed rape on her. Thereafter, he also threatened with dire consequences. In this regard, the victim filed Ex.P.1 complaint dated 25.08.2004 before Sivagangai Taluk police station at around 1.00 p.m. The complaint was received and Crime No.222 of 2004 was registered for the offences under Section 376 and 506(ii) of I.P.C. Investigation was taken up and after completing the usual formalities, final report was laid before the learned Judicial Magistrate No.2, Sivagangai. Since the case was exclusively triable by the Sessions Court, the case was committed to the Sessions Court in P.R.C.No.5 of 2006. The case was made over to the Assistant Sessions Court, Sivagangai in S.C.No.81 of 2006. Charges under both the sections were framed. On being questioned, the accused denied the charges and claimed to be tried. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.10. M.O.1 to M.O.8 were marked. On the side of the accused, no evidence was adduced. The learned trial Judge was satisfied that the prosecution had proved the case beyond reasonable doubt. Against the same, this appeal has been filed.

4. The learned counsel appearing for the appellant pointed out that there was a gross delay in registering the First Information Report. While according to the victim, the occurrence had taken place on 23.08.2004, lodging of the complaint was only on 25.08.2004 at about 1.00 p.m. He also pointed out that according to P.W.1, soon after the occurrence, she complained to P.W.6. It was at that time, the appellant is said to have held out dire threats to her. But then, P.W.6 turned hostile and did not support the prosecution case. More than anything else, the learned counsel appearing for the appellant pointed out that it is an elementary procedure that the victim is sent for medical examination. In this case, neither the Doctor was examined, nor his certificate was marked. This was because, the certificate was in favour of the accused. The Doctor appears to have certified that there was no evidence of sexual intercourse and that is why the prosecution willfully withheld the said piece of evidence.



5. I am satisfied that the appellant had made out a clear case for acquittal as far as rape is concerned. But then, this Court is satisfied that the appellant had definitely outraged the modesty of the victim. The victim was studying in 12th standard during the relevant time. She was in girls hostel. A person who had undergone such traumatic experience cannot be expected to go to the nearest police station and lodge a complaint immediately. Therefore, I am of the view that mere delay in lodging the First Information Report will not weaken the case of the prosecution. But then, the prosecution had a duty to have examined the Doctor and also marked the certificate issued by him. The job of the prosecution is to produce all the relevant materials for consideration of the Court. It is quite possible that there was no commission of rape as such. But then, the criminal conduct of the appellant is more than established on going through the testimony of the victim who was examined as P.W.1. There is absolutely no need and necessity for the victim to implicate the appellant. Of course, the learned appellant's counsel would claim that there was a history of enmity between the victim's family and the appellant's family and that is why to take revenge on him, the complaint in question was given. This in my view is very preposterous. Under no circumstance would a person stake the honour of a girl child to settle such scores. It is well settled that the Court need not even look for corroboration of the victim's testimony. The victim had, in her testimony, deposed before the Court that she was raped by the appellant. As rightly pointed out by the appellant, beyond using the impression "rape", the victim has stated no more. Therefore, the fact that the Doctor had examined her was withheld by the prosecution. I come to the safe conclusion that it must have been the case of outraging the modesty of the victim and no more than that. Therefore, I am of the view that the conviction of the appellant for the offence under Section 376 of I.P.C., will have to be set aside and the appellant will have to be found guilty only in respect of the lesser offence under Section 354 of I.P.C.

6. Now comes to the sentence, the learned counsel appearing for the appellant submitted that both the victim as well as the appellant have got married and settled in their lives. He also pointed out that having regard to the evidence on record, he is not challenging the conviction imposed on the appellant under Section 354 of I.P.C. The occurrence had taken place more than 15 years ago.

7. Taking note of these mitigating aspects, the impugned Judgment is modified and the appellant is found guilty of the charge under Section 354 of I.P.C. But then, the sentence of imprisonment is also reduced to the period already undergone. The levy of fine is confirmed.



8. With this modification in the conviction as well as the sentence, the Criminal Appeal stands partly allowed. No costs. The bail bond, if any, executed by him shall stand cancelled.

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Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Assistant Sessions Judge,
Sivagangai District.
2. The Principal Sessions Judge, Sivaganga.
3. The Judicial Magistrate No.I,
Sivanaganga.
4. The Chief Judicial Magistrate,
Sivaganga.
5. The Superintendent,
Central Prison, Madurai.
6. The Inspector of Police,
Sivagangai Taluk Police Station,
Sivagangai District.
7. The Additional Public Proscutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.KANNAN, Advocate (SR-75895[F] dated 18/07/2019)

Crl. A. (MD)No.290 of 2011
17.07.2019

pmu

<https://hccs.ecourts.gov.in/Case/4P-10C>