



Bail Slip

Sivakumar, S/o.Sundararaj, Sole Accued was released on bail as per order of this Court dated 13.10.2011 in MP(MD).No.1/2011 in Crl.A.(MD).No.75 of 2011 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl A(MD)No.75 of 2011

Sivakumar

... Appellant / Accused

Vs.

State, rep.by
the Inspector of Police,
All Women Police Station,
Musiri, Trichy District.
(Cr.No.6 of 2008)

... Respondent / Respondent

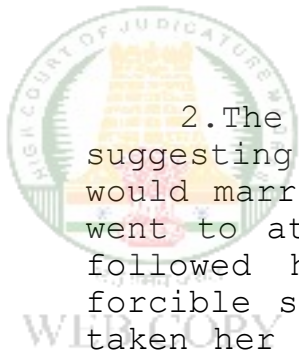
Prayer : This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to set aside the order passed in S.C No.106 of 2009, dated 01.03.2011 on the file of the Sessions Judge, Mahila Court, Trichy.

For Petitioner : Mr.Veera.Kathiravan, Senior Counsel
for M/s.Veera Associates

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

JUDGMENT

The appellant has been shown as the first accused in S.C No.106 of 2009 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli. He was found guilty of the offences under Sections 366 A and 376 IPC and sentenced to undergo seven years rigorous imprisonment for the offence under Section 376 of IPC and to undergo five years rigorous imprisonment for the offence under Section 366 A IPC. Questioning the same, this appeal has been filed.

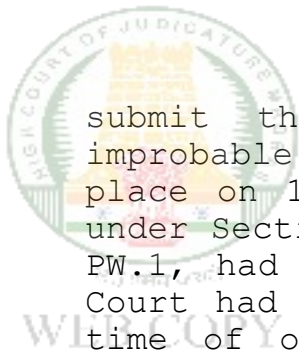


2.The case of the prosecution is that the appellant had been suggesting to the victim that he was in love with her and that he would marry her. On 13.01.2008 at about 06.30 A.M when the victim went to attend the call of nature, the appellant is said to have followed her and carried her to a lonely place and committed forcible sexual intercourse on her. Thereafter, the appellant had taken her in his two wheeler to a local temple and also tied Thali on her. But, the appellant did not honour his commitment and left her in her parents house. The parents of the appellant informed them that they would not allow her to live with A1. Hence, the victim lodged Ex.P1 complaint on 14.02.2008 before the Inspector of Police, All Women Police Station, Musiri. Crime No.6 of 2008 under Sections 366 A, 376 and 506 (i) IPC. Investigation was taken up and final report came to be filed for the said offences before the Judicial Magistrate, Thuraiyur. Cognizance of the offences was taken and the case was committed to the Sessions Court. It was made over to the Mahila Court/Sessions Judge, Tiruchirappalli in S.C No.106 of 2009. Not only the appellant but his parents were also shown as accused. Charges were framed against all of them. As regards A2 and A3 charge under Section 506(i) IPC was framed. The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Exs.P1 to P15. M.O.1 and M.O.2 were also marked. The learned trial judge after a detailed consideration of the evidence on record, by the impugned judgment dated 01.03.2011 acquitted A2 and A3 but convicted and sentenced the first accused for the offences under Sections 376 and 366 A IPC as mentioned above. Challenging the same, this appeal came to be filed.

3.Heard the learned Senior Counsel appearing for the appellant and the learned Government Advocate (crl.side) for the prosecution.

4.I carefully considered the rival contentions and perused the evidence on record. On the side of the prosecution, the victim was examined as PW.1. According to the victim, the occurrence took place on 13.01.2008 at about 06.30 A.M. The place of occurrence mentioned in the complaint is near the river bed of Vairichettipalayam. It is not in dispute that the victim as well as the accused are residents of the same place. The victim was aged around 15 years and was studying 8th standard at the the time of occurrence. The case of the victim is that when she went to attend call of nature, the appellant followed her and carried her away and had forcible sexual intercourse with her. The victim would claim that thereafter the appellant told her that he wanted to marry her and took her in his two wheeler with her hands tied and kerchief on her mouth. According to the victim they both went to the temple at Thuraiyur where the appellant married her by tying Thali. Photos were also taken. It is not in dispute that the distance between Thuraiyur and Vairichettipalayam about 30 kms.

<https://hcservices.ecourt.gov.in/hcservices> 5.The learned Senior Counsel appearing for the appellant would

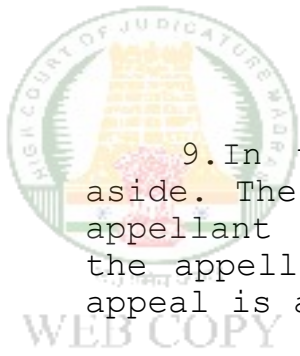


submit that the version given by the victim is inherently improbable. Though the prosecution case is that the occurrence took place on 13.01.2008 at about 06.30 A.M, in her statement recorded under Section 161 of Cr.Pc, the principal prosecution witness namely PW.1, had not stated anything about the time of occurrence. This Court had a look at Ex.P1 complaint. In the complaint also, the time of occurrence has not been mentioned. PW.1 in her cross examination admitted that on the same date, a complaint was lodged before the Uppliyapuram Police Station and that there was a police enquiry. But then, this earliest complaint lodged by the victim has been totally suppressed. Ex.P2 is the second complaint. Crime No.6 of 2008 came to be registered only based on the second complaint.

6.It is not in dispute that the appellant got married to one Radha on 07.01.2008. The petitioner's Senior counsel would submit that no newly married person would commit the offence as alleged by the prosecution within one week after his marriage. In any event, the version of PW.1 is simply impossible to believe. She would claim that her hands were tied and her mouth was closed by kerchief and that she was taken in a motor cycle from the place of occurrence to a temple. The distance between the two is about 30 kms. It is simple impossible to believe that no one would have witnessed a young girl being taken in such a condition.

7.According to PW.1, the occurrence took place near the river bed and that they left directly to the temple from the said place where the marriage was performed between the appellant and the victim and it was duly photographed. It is not the case of the victim that after the occurrence she came to her house and that thereafter she went to the temple. In the photograph, the victim was found wearing a silk saree. The learned Senior Counsel for the petitioner would point out that if the version of PW.1 is to be accepted, she had gone to attend the call of nature by wearing a silk saree. This is a case of sexual offence. Therefore, what was worn at the time of occurrence is important. In this case, the dress worn by the victim at the time of occurrence was not recovered.

8.PW.9 is the doctor who examined the victim. She had clearly stated that there was no seminal residue when the smear test was performed. No injuries were found on the genetalia of the victim. Not even a scar was found on the body of the victim. The occurrence spot was obviously a open place. If in an open field, the forcible intercourse in question had been committed on a young girl, she would have definitely suffered at least minor injuries on her body. No such evidence was found. Therefore, looked at from any angle, I must hold that the prosecution has not established its case beyond reasonable doubt against the appellant. The sheer improbability of the victim's version was not taken note of by the trial judge.



9. In this view of the matter, the impugned judgment is set aside. The appellant is acquitted. The bail bond executed by the appellant shall stand cancelled. Fine amount if any remitted by the appellant, the same shall be refunded to him. This criminal appeal is allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

Skm

To

1. The Sessions Judge, Mahila Court, Trichy.
2. The Inspector of Police, All Women Police Station, Musiri, Trichy District.
3. The Judicial Magistrate, Thuraiyur, Trichy District.
4. Do through The Chief Judicial Magistrate, Trichy.
5. The Superintendent, Central Prison, Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s. VEERA ASSOCIATES, Advocate (SR-78957[F] dated 31/07/2019)

Crl A(MD)No.75 of 2011
30.07.2019

JMN(27.09.2019) 4P : 8C