



BAIL SLIP

Crl.A (MD)No.122 of 2010

The Appellant/Accused namely 1. Chitthiraipandy, 2.Rajapandy were released on bail as per order of this court dated 08.04.2010 and made in Crl MP No.1 of 2010 in Crl.A(MD)No.122 of 2010 on the file of this court.

Crl.A (MD)No.126 of 2010

The Appellant/Accused namely 1.Rajalingam, 2.Selvan were released on bail as per order of this court dated 13.04.2010 and made in Crl MP No.1 of 2010 in Crl.A(MD)No.126 of 2010 on the file of this court.

Crl.A (MD)No.128 of 2010

The Appellant/Accused namely 1. Kartheesan, 2.Rajan were released on bail as per order of this court dated 13.04.2010 and made in Crl MP No.1 of 2010 in Crl.A(MD)No.128 of 2010 on the file of this court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)Nos.122, 126 and 128 of 2010

1.Chitthiraipandy

2.Rajapandy ... Appellants/Accused in Crl.A.(MD)No.122 of 2010

3.Rajalingam

4.Selvan ...1st and 2nd Appellants in Crl.A.(MD)No.126 of 2010

5.Kartheesan

6.Rajan ... 1st and 2nd Appellants in Crl.A.(MD)No.128 of 2010

Vs

State represented by
The Inspector of Police,
Thisaiyan Vilai Police Station,
Tirunelveli,
Tirunelveli District.
(Crime No.561 of 1994)

.. Respondent in all Crl.As.



Common Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment and Conviction of the learned Sessions Judge, Magalir Neethimandram, Tirunelveli, Tirunelveli District, dated 26.03.2010 in S.C.No.338 of 1996.

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For Appellants : Mr.A.R.L.Sundaresan
Senior Counsel
for Mr.J.Ashok

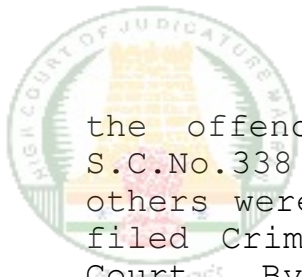
For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)
(in all Crl.As.)

COMMON JUDGMENT

These three appeals are directed against the Judgment dated 26.03.2010 made in S.C.No.338 of 1996 on the file of the Sessions Judge, Mahila Court, Tirunelveli, convicting and sentencing the appellants as follows:-

Accused	Penal Provision	Punishment
A1 to A3	376(2) (g) IPC	To undergo 10 years rigorous imprisonment each and Rs.10,000/- as fine, in default to undergo one year RI
A4 to A6	376(2) (g) r/w 109 IPC	To undergo 10 years rigorous imprisonment each and Rs.10,000/- as fine in default to undergo three months rigorous imprisonment.

2. The case of the prosecution is that on 26.08.1994, at about 02.00 a.m., the victim, after taking part in a temple festival, was persuaded by one Panneer Selvam to come to her house. When the victim reached the house of Panneer Selvam, the said Panneer Selvam is said to have informed the victim that she can submit herself to A1 and A2 and that, she would be suitably remunerated. The victim claimed that she became afraid and came out of the house of Panneer Selvam. But then, A1 and A2 closely followed her and forcibly carried her away to nearby field known as K.P.Garden. There, all the accused perpetrated gang rape on her. In this regard, the victim lodged Ex.P1 complaint before the Thisaiyanvillai Police Station, leading to registration of FIR (Ex.P12) in Crime No.561 of 1994. FIR was registered by P.W.9-Sub Inspector of Police. Investigation was undertaken and final report came to be filed not only against the appellant herein but also against the said Panneer Selvam who was shown as A1. Cognizance of



the offence was taken. The case was taken up for trial in S.C.No.338 of 1996. Al-Panneer Selvam was acquitted, while the others were convicted. Challenging the same, the appellants herein filed Criminal Appeal (MD)Nos.27, 36 and 39 of 2005 before this Court. By Judgment dated 21.07.2009, the appeals were allowed and the case was remanded to the file of the trial Court for re-framing the charges. Thereafter, the impugned Judgment was rendered convicting and sentencing the appellants herein as mentioned above.

3. The learned Senior Counsel appearing for the appellants contended that the impugned Judgment will have to be set aside and wanted this Court to acquit the accused of all the charges.

4. Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant interference.

5. I carefully considered the rival contentions and perused the evidence on record.

6. The allegation against the appellants was one under Section 376(2)(g) as far as A1 to A3 are concerned and Section 376(2)(g) r/w 109 of IPC against A4 to A6. The appellant denied the charges and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P1 to Ex.P26 and M.O.1 to M.O.3. On the side of the accused, D.W.1 and D.W.2 were examined. The victim was examined as P.W.1. P.W.2 is the mother of the victim. P.W.3 is the sister of the victim. P.W.4 who is a local villager, turned hostile. P.W.5 and P.W.6 also turned hostile. P.W.7 is the radiologist, according to whom, the victim was aged 18 years at the time of occurrence. P.W.8 is the medical witness. But he did not examine the victim. It was the Doctor-Santhanalakshmi who had conducted the medical examination of the victim. P.W.9 registered FIR. P.1.0-Doctor issued potency certificate in respect of the accused. P.W.11 is the Investigating Officer who conducted the investigation and filed a final report.

7. The learned Senior Counsel appearing for the appellants/convicted accused submitted that according to the prosecution, the occurrence took place on 26.08.1994 at about 02.00 a.m. But then, the complaint was lodged only on 01.09.1994, at around 04.00 p.m., He submitted that there is a huge unexplained delay of seven days. I am however not persuaded by this submission.

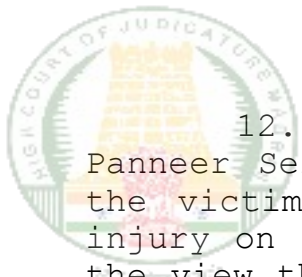
8. In case of rape, where the victim is just around 18, the family would hesitate to lodge a police complaint immediately. In this case, the victim had stated that her mother was out of station and she returned only few days after the occurrence. Therefore, I am of the view that the delay occasioned in this case is not fatal to the prosecution.



9. But then, the learned Senior Counsel raised several other substantial contentions in favour of the appellants. He pointed out that according to the victim, but for the persuasion and compulsion of Panneer Selvam, she would have gone to the house. Only in the house of Panneer Selvam, the victim was introduced to A1 and A2 and certain allurements were held out to her. But interestingly, Panneer Selvam had been acquitted in the first round itself. Neither the State nor the victim challenged the acquittal of Panneer Selvam. This has become final. Thus, the very anchor of the prosecution has been totally weakened. Be that as it may, it is also relevant to note that even according to the victim, gang rape took place in a rough area which is full of thorny bushes. According to her, she was successively raped by as many as three persons, while the other accused forcibly held her. If that be so, grievous injuries would have been found on the body of the victim. Ex.P9 is the record of the medical examination of the victim conducted by the Doctor Santhanalakshmi. In the said Ex.P9 which was marked through P.W.8, it has been mentioned that there is no injury on the person of the victim. In fact, Ex.P9 concludes that no definite opinion as regards rape can be given.

10. The learned Senior Counsel also took me through the testimony of the victim. The victim had deposed that on the next day, she went for doing her beedi rolling work along with other girls. She also admitted that she did not reveal the occurrence to any of her co-workers. This is improbable. A person who was subjected to violent gang rape in the early hours on 26.08.1994, appears to have continued with her routine day to day work as if nothing had happened.

11. P.W.8 had categorically stated that if gang rape as alleged by the victim, had actually taken place, injuries would have certainly been found on the body of the victim. The victim claimed that her clothes were shown before the Police. But then, they were not marked before the Court. In fact, they were not produced before the Court. Non production of the clothes of the victim worn during the occurrence casts serious doubt on the entire prosecution case. Though it is not strictly relevant, this court has to observe that after the occurrence, the victim got married to A6-Selvan. In fact, in the cross examination, she admits that she got married to Selvan and was his wife. In fact, the suggestion of the accused is that there was an affair between the victim and A6-Selvan and that the victim entertained suspicion against A1 to A5 and the other appellants that they were acting as impediments to her marriage and that is why, she had foisted the case in question. This appears to be considerable force in the said suggestion.



12. For all these reasons, namely, the acquittal of A1-Panneer Selvam, non production and non marking of the clothes of the victim worn at the time of occurrence, non presence of any injury on the body of the victim and the medical evidence, I am of the view that the impugned Judgment will have to be set aside. The appeals are 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 (CS-II)

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Sub Assistant Registrar(CS)

To

1.The Sessions Judge,
Magalir Neethimandram, Tirunelveli, Tirunelveli District.

2. The Superintendent, Central Jail, Palayamkottai.

3.The Inspector of Police,
Thisaiyan Vilai Police Station,
Tirunelveli,
Tirunelveli District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.J.ASHOK, Advocate (SR-83126[F] dated 22/08/2019)

CrI.A(MD)Nos.122, 126 and 128 of 2010
22.08.2019

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