

**Bail Slip**

Mani @ Manikandan, S/o.Pirambar, aged about 26/2010, Sole Accused was released on bail by this Court in order dated 26.10.2010 in MP(MD).No.1 of 2010 in CrI.A.(MD).No.192 of 2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.A.(MD)No.192 of 2010

Mani @ Manikandan

... Appellant

Vs.

The State rep. by
The Inspector of Police,
All Women Police Station,
Melur, Madurai District.
(Crime No.2 of 2004)

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records and set aside the conviction and sentence passed in S.C.No.527 of 2005, dated 30.04.2010, on the file of the learned Additional Sessions Judge, Mahila Court, Madurai and allow the appeal.

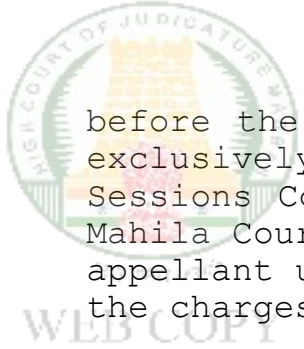
For Appellant : Mr.S.Chandrasekar

For Respondent : Mrs.S.Bharathi
Government Advocate (CrI. Side)

JUDGMENT

The appellant was convicted for the offence under Sections 450 and 376 of I.P.C. and sentenced to undergo two years rigorous imprisonment and seven years vide judgment dated 30.04.2010 by the learned Mahila Court, Melur. Questioning the same, this criminal appeal has been filed.

2.The case of the prosecution is that the appellant trespassed into the house of the victim on 07.04.2004 at about 04.00 p.m. and had sexual intercourse with the victim. In this regard, the victim/P.W.1 lodged Ex.P.1/complaint before the Inspector of Police, All Women Police Station, Melur. Ex.P.5/FIR was registered in Crime No.2 of 2004, for the offence under Sections 450 and 376 of I.P.C. Investigation was undertaken and final report was filed



before the learned Judicial Magistrate, Melur. Since the case was exclusively triable by the Sessions Court, it was committed to Sessions Court in P.R.C.No.50 of 2004 and made over to the learned Mahila Court in S.C.No.527 of 2005. Charges were framed against the appellant under Sections 450 and 376 of I.P.C. The appellant denied the charges and claimed to be tried.

3.The prosecution examined as many as 16 witnesses including the victim and marked Exs.1 to 11. On the side of the accused no evidence was adduced.

4.The learned Trial Judge was satisfied that the prosecution had proved its case beyond reasonable doubt and convicted and sentenced the appellant as mentioned above.

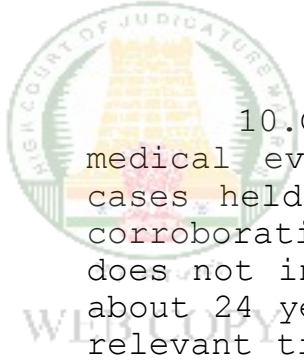
5.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum and wanted this Court to reverse the judgment of the Court below.

6.Per contra, the learned Government Advocate (Crl. Side) wanted this Court to sustain the impugned judgment.

7.I carefully considered the rival contentions and perused the materials on record.

8.The case of the prosecution is that the appellant trespassed into the house of the victim on 07.04.2004 at about 04.00 p.m. The victim would claim that during the relevant time she was alone. Her parents had gone out. She claims that when she was cutting vegetables, the accused entered the house in drunken condition and came from behind and undressed her and committed rape on her. At that time, the victim's sister entered the house, the appellant ran away from the house. The victim claims that she fell unconscious. She would also claim that even though she raised alarm, it was not audible because of the radio sound coming from the wedding function. Since both the appellant and the victim belong to same community, they decided to wait for amicably resolving the issue. Since the appellant ran away, she had to lodge Ex.P.1/complaint. Victim identified her signature in Ex.P.1/complaint.

9.It is seen that after the case was registered, the victim was referred to Madurai Rajaji Government Hospital. P.W.13 is the Doctor, who examined the victim. Ex.P.8 is the certificate of examination for sexual offence cases issued by the Doctor/P.W.13. P.W.13 in her certificate had clearly stated that there were no injuries on the body of the victim. There was no injury on her private part also. In fact the Doctor deposed before the Court that the victim did not appear to have sexual intercourse recently. The medical evidence completely falsified the theory of rape projected by the victim.



10. Of course in a rape case, this Court need not go by the medical evidence. In fact the Honourable Supreme Court in many cases held that the testimony of the victim does not require any corroboration. But then in this case, the testimony of the victim does not inspire the confidence of this Court. The victim was aged about 24 years and the appellant was aged about 20 years during the relevant time. The victim would claim that the appellant was drunk at the time of occurrence. The doors of the house were open. The windows of the house were also open. In fact the occurrence did not take place in any remote area. The occurrence is said to have occurred right in the house of the victim. The victim would claim that the appellant completely undressed her and thereafter committed rape on her. It is impossible to believe the testimony of P.W.1 and it does not inspire the confidence of this Court.

11. The learned counsel for the appellant would draw my attention to the suggestion put to the victim. It is stated that the victim was a divorced woman. The victim and the appellant belong to same community. Therefore, there was a talk of getting married to the appellant but then on the day in question in the wedding function celebrated in the village, a person by name Sundram had come from Pollachi. It was then decided that the appellant would get married to the daughter of Sundram. Therefore, angered by this development and apprehending that she may not get married to the appellant, the victim is alleged to have given this false complaint. This is the suggestion put by the appellant in the cross examination of P.W.1. In fact the victim in the chief examination would claim that after committing rape on her, the appellant ran away from her house. But in the cross examination she would admit that when her mother came, the appellant was sitting outside. These discrepancies in the testimony of the victim/P.W.1 indicate that the victim had falsely implicated the appellant. The Court below did not take note of these vital aspects. The appellant should not have been convicted for the offence under Sections 450 and 376 of I.P.C. The judgment of the Court below is set aside and this criminal appeal is allowed. The appellant is acquitted of all the charges.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To:

1. The Additional Sessions Judge,
Mahila Court, Madurai

<https://hcservices.ecourts.gov.in/hcservices/>

