



**Bail Slip**

**The Appellant/Accused namely** Bala @ Balakrishnan , S/o.Balraj was released on bail by this Hon'ble Court made in bail by this Hon'ble Court made in MP(MD)No.1/2010 in Crl.A.(MD)No.229 of 2010 dated 04.10.2010.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 16.07.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**Crl.A. (MD)No.229 of 2010**

Bala @ Balakrishnan

... Appellant/A1

Vs.

1.State Rep. by  
The Inspector of Police,  
Lalgudi Police Station,  
Trichy District.  
(Crime No.989 of 2008)

... Respondent/Complainant

2.Miss.G.Yuvarani rep by her  
father Ganapathy  
(R2 impleaded as per the order of  
this Court dt.15.11.2010  
made in MP(MD)2/2010

...Proposed repondent No.2

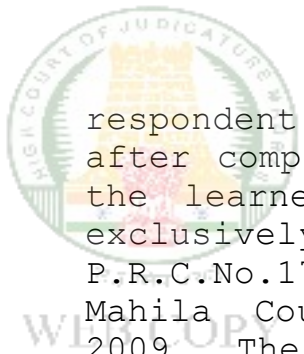
**Prayer:** Criminal Appeal is filed under Section 374(2) of Cr.P.C, to set aside the judgment and conviction passed by the Sessions Judge (Mahila Court), Tiruchirapalli in S.C.No.139 of 2009, dated 07.07.2010 and acquit the appellant herein.

For Appellant : Mr.T.A.Omprakash

For Respondent No.1: Mr.A.Robinson  
Government Advocate (Crl. Side)

**JUDGMENT**

The case of the prosecution is that on 03.11.2008 from around 12 noon four accused raped the victim by turn. Thereafter the accused allegedly threatened that if she was to reveal the same, she would not be alive. The victim lodged Ex.P.1/complaint before the Inspector of Police, Lalgudi Police Station. Based on the same, Ex.P.13/FIR in Crime No.989 of 2008 was registered for the offence under Section 376 of I.P.C. The



respondent took up the investigation and arrested the accused and after completing all the formalities laid the final report before the learned Judicial Magistrate, Lalgudi. Since the case was exclusively triable by the Sessions Court, it was committed in P.R.C.No.17 of 2009. It was thereafter made over to the learned Mahila Court/Sessions Court, Tiruchirappalli in S.C.No.139 of 2009. The accused were charged with the offence under Section 376 (2)(g) of I.P.C. The appellant herein, who was shown as A1 was additionally charged with the offence under Section 506(ii) of I.P.C. The accused pleaded not guilty of the charges and claimed to be tried.

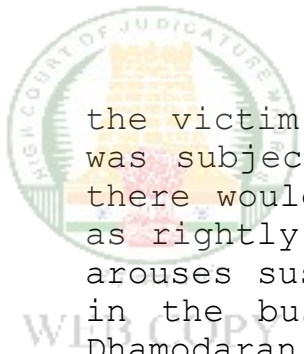
2.The prosecution examined as many as 12 witnesses and marked Exs.1 to 30. M.O.1 to M.O.3 were also marked. The incriminating circumstances were put to the accused.

3.The learned Trial Judge by judgment dated 07.07.2010, acquitted A2 to A4 and found the appellant alone guilty of the offences under Sections 376 and 506(ii) of I.P.C. A2 had died during the pendency of the trial. Challenging the judgment of conviction and sentence, this criminal appeal has been filed.

4.The learned Government Advocate (Crl. Side) submitted that the impugned judgment does not warrant any interference. He wanted this Court to sustain the same and dismiss this appeal.

5.The prosecution charge is that the victim was subjected to gang rape. The victim, who was examined as P.W.1 stated that she was first raped by one Sasi. When that was occurring, Dhamodaran and the appellant are said to have closed her mouth. Thereafter Dhamodaran raped her. That was followed by the appellant. Thereafter Paramaswaran raped her. Thereafter Karthick committed rape on her. After all the accused raped her by turns, Sasi also raped her. From P.W.1's evidence, one can come to the conclusion that according to her, she was subjected to gang rape from 11.00 a.m. to 07.00 p.m. She thereafter claims to have escaped and ran away to her house. She informed her mother and her uncle lodged Ex.P.1/complaint on the next day. The victim was referred to Government Hospital, Trichy at about 12.15 p.m. on 06.11.2008. P.W.6 was the Doctor, who examined P.W.1. It has been endorsed in the accident register/Ex.P.7 as PV. The hymen of the victim was found to be torn but no internal injuries were found. Likewise no injuries were found on the body of the victim. Vaginal smear tested negative for sperms. P.W.6 had deposed categorically in this regard before the Trial Court.

6.The date of birth of the victim is 30.05.1994. Ex.P.9 is the school record issued by P.W.7. Thus on the occurrence date,



the victim was just around 14 years of age. If a 14 year old girl was subjected to gang rape of this nature, it is impossible that there would not any injury on her body. More than anything else, as rightly pointed by the appellant's counsel, the occurrence spot arouses suspicion of this case. According P.W.1, she was waiting in the bus stop of Poovallur and talking on her mobile. One Dhamodaran is said to have snatched her mobile and moved away. According to P.W.1, she was closely following him from behind for about 50 feet. In the nearby sugarcane field, the other accused joined and there the event described by her happened.

7.As rightly contended by the appellant's counsel that the occurrence spot was hardly 50 feet from the bus stand. Ex.P.23/rough sketch clearly indicates that proximity of the occurrence spot to the bus stop. The occurrence is said to have taken place from around 11.00 a.m. Therefore, it is simply impossible that P.W.1 would have been subjected to gang rape over seven hours at such a spot. I am of the view that the case projected by the prosecution is inherently improbable.

8.Again as rightly pointed by the appellant's counsel, the victim has been periodically improving her version. In Ex.P.1/complaint, she stated that she was raped by one person namely., the appellant herein. But before the Doctor/P.W.6, she claims to have been raped by five unknown persons. But before the Investigating Officer, she claims to have been raped by six known persons. Thus the number as well as the identity of the persons have been changed.

9.In these circumstances, I am of the view that it would be most unsafe to convict the appellant on a serious and grave charge such as rape. The Court below has assigned strong and convincing reasons for acquitting the remaining three accused. I am of the view that the reasons which impelled the Court below to acquit A2 to A4 are sufficient for acquitting the appellant also. In this view of the matter, the impugned judgment is set aside and the criminal appeal is allowed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



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To:

1.The Sessions Judge  
Mahila Court,  
Tiruchirapalli.

2.The Judicial Magistrate,  
Lalgudi

3.The Chief Judicial Magistrate  
Trichy

4.The Superintendent, Central Prison  
Trichy

5.The Inspector of Police,  
Lalgudi Police Station,  
Trichy District.

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

+1 CC to M/s.T.SENTHIL KUMAR, Advocate ( SR-75511[F] dated  
16/07/2019 )

**Crl.A. (MD)No.229 of 2010  
16.07.2019**

\_KM/ (31.10.2019) 4P 8C