

**BAIL SLIP**

The Appellant/Accused viz., Murugan S/o Paulraj was released on bail was granted on 07.12.2011 made in MP(MD)No.1 of 2011 in CrI Rc (MD)No.949 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrI.R.C. (MD)No.949 of 2011

Murugan

... Petitioner/Petitioner

Vs.

The State rep. By,
The Sub Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.
(Crime No.39 of 2005)

... Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 and 401 of Cr.P.C, to call for the records pertaining to order in C.A.No.128 of 2006 dated 21.10.2011 passed by the District and Sessions Judge, Srivilliputhur, modifying the Judgment in S.C.No.101 of 2005 dated 13.07.2006 on the file of the Chief Judicial Magistrate, Virudhunagar and set aside the same and allow the Revision petition.

For Petitioner : Mr.P.Bhaskar,
Legal Aid Counsel.

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

* * *

O R D E R

The petitioner was convicted and sentenced by the learned Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur, in S.C.No.101 of 2005 vide Judgment dated 13.07.2006 as follows:-

Accused	Penal Provisions u/s.	Punishment
Revision petitioner/ Sole accused	366 of I.P.C.	To undergo 5 years R.I., with fine of Rs.500/-. In default, to undergo 3 months R.I.
	354 of I.P.C.	To undergo 2 years R.I.



Questioning the same, the petitioner filed C.A.No.128 of 2006 before the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur. The learned appellate Judge by Judgment dated 21.10.2011 confirmed the conviction and modified the sentence of imprisonment from five years Rigorous Imprisonment to three years Rigorous Imprisonment for the offence under Section 366 of I.P.C., and confirmed the sentence of imprisonment for the offence under Section 354 of I.P.C.

2. Heard the learned counsel on either side.

3. The case of the prosecution is that on 01.03.2005 at about 5.30p.m., the victim girl was returning from her work spot. When she was walking in a lonely cart track between Valaiyankulam and Kottaipatti, the Revision petitioner/accused way laid her and forcibly took her to some distance and stuffed her mouth with the cloth of her own half sari and attempted to have forcible sexual intercourse with her. In the process, injuries were inflicted on her upper lips, neck and left forehead. The victim raised an alarm and hearing the same, her co-workers, namely, Muthulakshmi, Rajalakshmi and Sakthi came rushing. Seeing them, the accused run away. The victim informed her mother who in turn took up the matter with the village elders. Since they suggested that police complaint must be given, the victim accompanied by her mother went to Nathampatti police station and lodged Ex.P.1 complaint at about 7.00 p.m. P.W.14 Sub Inspector of Police received the complaint and registered Crime No.39 of 2005 for the offence under Section 376 r/w 511 of I.P.C.(Ex.P.15). The victim was referred to the Government Hospital, Srivilliputhur for treatment. On 02.03.2005 at about 2.00 a.m., P.W.13 examined the victim. He issued Ex.P.14 Wound Certificate. Injuries spoken by the victim have been noted in the said Wound Certificate. P.W.17 Circle Inspector of Police took up further investigation and visited the occurrence spot. In the presence of P.W.7 and one Kamatchi, he prepared Ex.P.3 Observation Mahazar. He also prepared Ex.P.16 Rough Sketch. He collected M.O.1 and M.O.2 from the spot under Ex.P.4. He recorded the statements of the witnesses. The accused was arrested at around 11.30a.m. on 02.03.2005. He was sent to the hospital for taking potency test. After completing all the other formalities, final report was laid against the accused before the Judicial Magistrate, Srivilliputhur. Since the case was triable by the Sessions Judge, it was committed to Sessions Court in P.R.C.No.4 of 2005. Thereafter, it was made over to the Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur in S.C. No.101 of 2005. The charges were framed against the accused under Sections 366 and 376 r/w 511 of I.P.C. The accused pleaded not guilty and claimed to be tried.

4. The prosecution examined as many as 17 witnesses and marked Ex.P.1 to Ex.P.18. M.O.1 and M.O.2 were also marked. On the side of the accused, no evidence was adduced. The learned trial Magistrate vide Judgment dated 13.07.2006 convicted and sentenced the accused as mentioned above. The same was modified by the



appellate Court as mentioned above. Challenging the same, this Criminal Revision has been filed.

5. It is true that P.W.2 Sakthi, P.W.15 Muthulakshmi and P.W.16 Rajalakshmi did not support the prosecution case. But then, P.W.15 and P.W.16 have deposed that on the occurrence date when they were coming in the cart track in question, the victim was sitting alone and crying. The case of the victim is that when the accused attempted to rape her, because of the intervention of these three young women she was saved. Even though they did not stick to their original stand, still even their hostile evidence corroborates the case put forth by the victim. In matters such as this, the Court need not even look for corroboration, if the testimony of the victim commands the confidence of the Court.

6. I carefully went through the testimony of P.W.1. She had clearly stated that when she was returning from her work-spot and when she was passing a lonely countryside cart track, the appellant/accused forcibly lifted her and took her away to some distance and attempted to have forcible sexual intercourse with her. She raised an alarm and hearing the same, her co-workers came rushing. Seeing them, the accused ran away. In this case, the occurrence was said to have taken place at 5.30. p.m., on 01.03.2005. The complaint was lodged within one day thereafter. She was referred to the hospital and Doctor P.W.13 had also confirmed the injuries as stated by the victim in her complaint. The testimony of the victim is certainly credible. Even though the accused had alleged that there was motive, the Courts below have declined to believe the same. His defence is too flimsy. As already stated, even though P.W.15 and P.W.16 turned hostile, their testimony lends strength to the version given by the victim. The Courts below have concurrently found the accused guilty of the offences under Sections 354 and 366 of I.P.C. After a careful re-appreciation of the evidence on record, I come to the conclusion that the prosecution had proved the case against the accused beyond reasonable doubt. I confirm the conviction given by the Courts below.

7. Now comes the question of sentence. More than 13 years have elapsed. Due to fortuitous circumstances, the victim escaped from getting raped and her travails ended soon. Taking note of the other mitigating facts and circumstances pleaded by the petitioner's counsel, this Court is of the view that interest of justice will be served by modifying and reducing the sentence of imprisonment from three years Rigorous Imprisonment to two years Rigorous Imprisonment for the offence under Section 366 of I.P.C. and confirming two years Rigorous Imprisonment for the offence under Section 354 of I.P.C. Both the sentences will run concurrently.

8. With this modification in the matter of sentence, the Criminal Revision stands partly allowed. The learned trial Judge is directed to secure the petitioner to undergo the remaining period of



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sentence. The bail bond, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

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To:

1. The District and Sessions Judge,
Srivilliputhur.
2. The Chief Judicial Magistrate,
Virudhunagar.
3. The Sub Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.
4. The Superintendent of Central Prison, Madurai.

Copy to

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

Cr1.R.C. (MD) No. 949 of 2011
12.07.2019

VB (20.12.2019) 4P 7C