



BAIL SLIP
Crl. A. (MD)No.41 of 2010

Sudalai, Male, aged 43/10, S/o.Rengasamy Thevar, who is the appellant/Sole Accused in Crl. A. (MD)No.41 of 2010 was directed to be released on bail vide order of this Hon'ble Court dated 06.05.2010 made in MP(MD).No.1/2010 in Crl. A. (MD)No.41 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Crl. A. (MD)No.41 of 2010

Sudalai

.. Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Vasudhevanallur,
Tirunelveli District.
(Crime No.6 of 2007)

.. Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to admit this appeal on file, call for the records from the lower Court Mahalir Neethimandram, Tirunelveli, Tirunelveli District and duly set aside the Judgment of the lower Court by acquitting the appellant in S.C.No.378 of 2007 dated 08.02.2010.

For Appellant : Mr.K.Prabhu

For Respondent: Mr.A.Robinson,

Government Advocate(Crl. Side).

JUDGMENT

The appellant was convicted for the offence under Sections 376 and 306 of I.P.C. and Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act. For the offence under Section 376 of I.P.C, he was sentenced to undergo seven years Rigorous Imprisonment and he was levied with a fine of Rs.5,000/-. For the offence under Section 306 of I.P.C., he was again sentenced to undergo seven years Rigorous Imprisonment and he was levied with fine of Rs.5,000/-. For the offence under Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act, again he was sentenced to undergo seven years Rigorous Imprisonment and he was levied with a fine of Rs.5,000/-. All the sentences were to run concurrently. Challenging this Judgment dated 08.02.2010 made in S.C.No.378 of 2007 on the file of the learned Sessions Judge, Mahalir Neethimandram, Tirunelveli, this Criminal Appeal has been filed.



2. Heard the learned counsel on either side.

3. The case of the prosecution is as follows:-

The appellant's daughter Maheswari and the deceased A.M. were classmates studying in ninth standard in a local school. They were also neighbours. The deceased used to do joint study with her classmate Maheswari in the house of the appellant. When the deceased A.M. had gone to the house of the appellant, no one was there. Making use of the occasion, the appellant is said to have raped the said A.M. This appears to have happened on quite a few occasions. As a result, the said A.M. had conceived. When this was known to the parents, the pregnancy was aborted. Immediately thereafter, the parents of A.M. took A.M. to the house of the appellant and challenged him why he did so. The appellant is said to have stated that since abortion had been done, if she felt ashamed, A.M. should hang herself. They felt ashamed and returned home and unable to bear the inner stress, the deceased A.M. rushed into the room and committed suicide by hanging. This was on 13.01.2007 at about 01.00 p.m.

4. The father of the deceased A.M. lodged Ex.P.1 Complaint before the Inspector of Police, Vasudevanallur Police Station. Crime No.6 of 2007 was registered for the offence under Sections 376 and 306 of I.P.C. against the appellant herein. Investigation was undertaken and final report came to be filed before the learned Judicial Magistrate, Sivagiri. Cognizance of the offence under Sections 376 and 306 of I.P.C. and Section 4(b) of Tamil Nadu Prohibition of Harassment of Women Act was taken and the case was committed to the file of the Sessions Court in P.R.C.No.14 of 2007. The case was made over to the learned Sessions Judge, Mahila Court, Tirunelveli, in S.C.No.378 of 2007. Charge was framed on 19.11.2007. The appellant denied the charge and claimed to be tried.

5. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.11. M.O.1 to M.O.4 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge after consideration of the evidence on record, by the impugned Judgment dated 08.02.2010 held that the appellant was guilty of the offence with which he was charged. The appellant was convicted and sentenced as mentioned above.

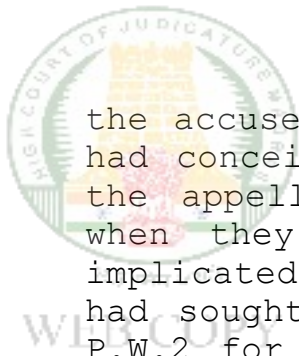
6. The learned counsel appearing for the appellant contended that a mere look at the charge would indicate that it has been defectively framed. He invoked Section 464 of Cr.P.C. that there has been a grave failure of justice. On this ground, he wanted this Court to reverse the Judgment of the Court below.



7. He also contended that as regards rape, there is absolutely no direct evidence at all. The case of the prosecution is that the deceased A.M. had conceived and that it was aborted by a particular doctor. But then, P.W.2 and P.W.3 when examined before the Court did not support the prosecution case. Thus, there is absolutely no evidence to indicate that there was any commission of rape on the deceased. He also pointed out that in the cross examination of P.W.1 it was suggested that there was no meeting of the appellant, parents of the deceased A.M. and the deceased A.M. on the fateful day at 10.00 a.m. as claimed by the prosecution. He drew my attention to the testimony of P.W.1 and P.W.4 to indicate that only the parents alone had gone to the house of the appellant to question him and that the girl did not accompany. If at all, some harsh words were exchanged between the appellant and the parents of the deceased. By no stretch of imagination, the appellant can be said to have instigated the commission of suicide by the deceased. He also contended that there is no previous history of the appellant's harassment to the deceased. There has been no registration of any case under Section 294(b), 354 and 509 of I.P.C. He also contended that there is no ingredient for framing of the charge under Section 4(b) of the Tamil Nadu Prohibition of Harassment of Women Act.

8. I am unable to agree with any of the submissions of the learned counsel appearing for the appellant. As rightly contended by the learned Government Advocate, the occurrence namely, suicide of A.M. had taken place on 13.01.2007 at 1.00 p.m. in their house. The testimony of P.W.3 as well as Ex.P.8 Postmortem Report would confirm the time of death also. It is seen that by 2.00 p.m. the father of the deceased has gone to Vasudhevanallur police station to lodge Ex.P.1 complaint. The nature of the acts attributed to the appellant have been cogently set out in Ex.P.1 complaint. It is true that P.W.2 had not supported the prosecution case. That is quite understandable. The deceased A.M. was born on 28.05.1992, as per Ex.P.10. She was aged less than 15 years, when the occurrence had taken place. She had conceived. In order to avoid further complications, the parents had approached a Doctor for terminating the pregnancy. For that, certain elaborate procedures are required. This would have embarrassed the family of the deceased. The Doctor must therefore have performed the abortion. But when it became a police case, in order to avoid complications for her profession and career, she chose to feign ignorance.

9. I am therefore of the view that failure on the part of P.W.2 to support the prosecution case would not really matter in this case. What matters is the testimony of the parents of the deceased. The father as well as the mother have categorically deposed that their daughter was the classmate of the daughter of



the accused and that they were neighbours and that their daughter had conceived as a result of the sexual intercourse committed by the appellant. In the chief examination, P.W.1 had stated that when they questioned their daughter about her pregnancy, she implicated the appellant in clear terms. Feeling ashamed, P.W.1 had sought the help of his sister-in-law who in turn approached P.W.2 for performing abortion. After the abortion was performed, the parents had taken their daughter to the house of the appellant to question him about what he had done. Both P.W.1 as well as P.W.4 has stated in their testimony that when they went to the house of the appellant, they had taken their daughter A.M. also. The appellant had defiantly replied, "now the abortion had been performed and what remains further". The deceased A.M. who was also present was overcome by acute shame and she immediately hanged herself. The appellant had clearly uttered the words "if you still feel ashamed, you ask your daughter to hang herself." This is a clear instigation on the part of the appellant.

10. The learned trial Judge who had the benefit of watching P.W.1 and P.W.4, came to the conclusion that their testimony evoked the confidence of the Court and carries conviction.

11. I am of the view that the decision rendered by the learned trial Judge does not call for any interference. It is true that the charge could have been properly framed. But then, as rightly pointed out by the learned Government Advocate, the appellant has not suffered any prejudice. The charge that was framed contains all the ingredients of the act attributed to the appellant. Therefore, there is no failure of justice. Only if there is failure of justice, Section 464 of Cr.P.C. can be pressed into service in favour of the appellant. The prosecution had established its case beyond reasonable doubt.

12. I find no ground to interfere with the Judgment passed by the Court below. This Criminal Appeal stands dismissed, accordingly. The learned trial Judge is directed to secure the appellant to undergo the remaining period of sentence. The bail bond, if any, executed by him shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)



To

WEB COPY

1. The Sessions Judge,
Mahila Court, Tirunelveli.
2. The Judicial Magistrate, Sivagiri
3. The Chief Judicial Magistrate, Tirunelveli
4. The Superintendent, Central Prison, Palayamkottai
5. The Inspector of Police
Vasudevanallur Police Station,
Tirunelveli District
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, -2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-74616[F] dated 10/07/2019)

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