



Bail Slip

C.Selvam, S/o Chinnambalam, aged about 40 years, sole accused was released on bail vide order of this court dated 29/04/2011 made in MP(MD)1/2011 in Cr1 RC(MD)No.569/2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24.10.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.R.C. (MD)No.569 of 2010

C.Selvam

.. Petitioner/Appellant/Accused

Vs.

State rep. by

The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.

.. Respondent/Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 read with 401 of the Criminal Procedure Code to call for the records relating to the order passed in C.A.No.37 of 2009, dated 05.07.2010, by the learned Additional District and Sessions Judge, Fast Track Court, Dindigul confirming the order dated 04.08.2009 passed by the Additional Assistant Sessions Judge, Dindigul in S.C.No.137 of 2005 and set aside the order of conviction and sentence.

For Petitioner : Mr.K.Manavalan

For Respondent : Mrs.S.Bharathi
Government Advocate (Cr1. Side)

JUDGMENT

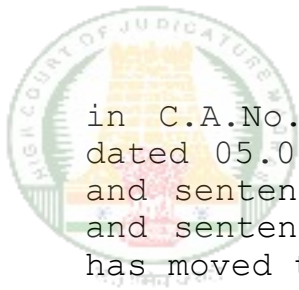
This Criminal Revision Case is filed by the petitioner / accused as against the concurrent findings of the Courts below.

2. The petitioner / accused was charged for the offence under Sections 376(1) and 506(i) IPC and the trial Court, namely, the learned Additional Assistant Sessions Judge, Dindigul, in conclusion of the trial, in S.C.No.137 of 2005, by order dated 04.08.2009, found the petitioner / accused guilty, convicted and sentenced him as follows:

Section of Law	Punishment
376(1) IPC	To undergo rigorous imprisonment for five years and to pay a fine of Rs.2,000/-, i/d to undergo simple imprisonment for one year.
506(i) IPC	To undergo simple imprisonment for one year.

Aggrieved, the petitioner has preferred an appeal before the learned Additional District and Sessions Judge, Fast Track Court, Dindigul,

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



in C.A.No.37 of 2009 and the lower appellate Court, by judgment dated 05.07.2010, dismissed the appeal and confirmed the conviction and sentence imposed by the trial Court. As against the conviction and sentence imposed by the Courts below, the petitioner / accused has moved the instant revision case.

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3. The brief facts of the prosecution case are as follows:

3.1. PW1, Selvi, who studied upto fourth standard, is a resident of Poothakudi and she used to graze the Goats. She was aged about 17 years at the relevant point of time. On 16.02.2005, when PW1's mother [PW3] was not well, PW1 went to Periyamadai around 10.00 am for grazing their Goats. Around 12.00 noon, when she left the Goats to graze near the Aandisamy Temple and standing under a nearby Tamarind Tree, the accused, Selvam, who is also grazing his Goats, came from her back, gagged her mouth and abducted her to Aruvipallam. When the accused put her at Aruvipallam, PW1 came to know that it is the petitioner / accused, who abducted her. The petitioner gagged her mouth with a towel and had forcible sexual intercourse with her. After the incident, the petitioner raised and PW1 saw bloodstains in her private parts and cleaned it with her in-skirt. When PW1 tried to get-away, the petitioner intimidated and strangulated her that if she discloses anything to her parents, he would kill them all. PW1, thereafter, left the place with crying.

3.2. On seeing PW1 came weeping, one Ganesan [PW2], who was also grazing in the nearby area, asked her and PW1 informed PW2 about the incident. PW2 asked PW1 to go to her house and that he will talk to her parents. PW1, after reaching her home, informed her mother [PW3] around 01.00 pm, as to what has happened to her. PW3 has washed the in-skirt worn by her daughter [PW1]. When PW4 [PW1's father] came home in the evening around 04.00 pm, after completing his works, PW3 informed her husband about the incident. Ganesan [PW2] has also informed PW4 about the incident. Since it was almost night, they went to the All Women Police Station, Vadamadurai, on the next day around 10.00 am and PW1 lodged the complaint [Ex.P1].

3.3. The Inspector of Police, All Women Police Station, Vadamadurai [PW18], on receipt of the complaint, registered the case in Crime No.2 of 2005, under Sections 376 & 506(ii) IPC. The printed FIR is marked as Ex.P25. She has prepared the observation mahazar [Ex.P4] and rough sketch [Ex.P28] and has also examined the witnesses. On the same day, she arrested the petitioner / accused in the presence of the witnesses and recovered the lungi [MO5] worn by the petitioner at the time of occurrence, under a cover of mahazar Ex.P27. The accused has given a voluntary confession statement and the admissible portion is marked as Ex.P29. She has also recovered the [out] skirt [MO1] as well as in-skirt [MO2] worn by PW1, at the time of occurrence.



3.4. PW18 has, thereafter, taken steps to refer the victim for medical examination, through Grade-I Police Woman [PW10] and the accused for medical examination, through Grade-I Policemen [PW11]. Dr.Uma Vaidhyanathan [PW13] examined the victim and issued the certificate Ex.P11 that there is a trace for recent intercourse and that there are four abrasions in her private part. Dr.Rajaram [PW14] examined the accused and issued the certificate in Ex.P18. The Accident Register issued by the Doctor [PW14] to the accused is marked as Ex.P12. PW18 has also requested to record the statements of the victim and the accused under Section 164 Cr.P.C, vide Ex.P17 & P.20 respectively. Accordingly, the learned Judicial Magistrate No.3 [PW16] has recorded the statements of the victim in Ex.P19 and the accused in Ex.P22 under Section 164 Cr.P.C.

3.5. The Inspector of Police has enquired the Headmaster [PW12], Panchayat Primary School, where the victim studied and obtained a report as to her date of birth in Ex.P10. She also referred the victim and the accused to Dr.Francis Dominicraj [PW17], for ascertaining their age. According to the Doctor, the victim was aged between 18 and 21 years. The reports furnished by the Doctor [PW17] as regards the age of the victim and the accused are marked as Exs.P23 & P24 respectively. The X-ray films taken in respect of the victim and the accused are marked as MOs.3 & 4 series (7 films, each), respectively.

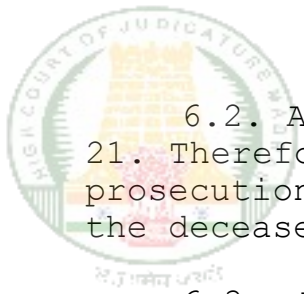
3.6. The Inspector of Police [PW18], after collecting the serological report [Ex.P15] and biological report [Ex.P16] from Dr.Surendran Palmani [PW15], Analyst, completed the investigation and filed the final report as against the petitioner / accused.

4. Before the trial Court, the prosecution has examined as many as 18 witnesses and marked 28 documents, besides 5 material objects. When the incriminating materials from the prosecution evidence was placed before the accused, he denied the same. The trial Court, in conclusion of the trial, found the accused guilty, convicted and sentenced him as stated supra and the same was also confirmed by the lower appellate Court.

5. Heard Mr.K.Manavalan, learned Counsel appearing for the petitioner and Mrs.S.Bharathi, learned Government Advocate (CrI. Side) appearing for the respondent / State.

6. The learned Counsel appearing for the petitioner has raised the following grounds for the consideration of this Court:

6.1. According to the prosecution, the place in which the alleged occurrence took place is a rocky area, as such, there should have been some extraneous injuries or at least abrasion on the body of the victim. But, there are no such injuries on the victim.



6.2. According to PW17, the age of the victim is between 18 and 21. Therefore, if really an occurrence took place, as alleged by the prosecution, in view of the absence of any injuries on the body of the deceased, it can only be construed as a consensual one.

6.3. Though the occurrence is said to have taken place on 16.02.2005 around 12.00 noon, the complaint was lodged only on the next day, around 10.0 am, with a delay of 22 hours. The prosecution has not explained any reason for the delay in lodging the FIR.

6.4. In the FIR, there is no reference to any injuries caused to the victim. In fact, there is no reference as to the washing of any cloths worn by the victim and this statement has been made for the first time before the Court for the purpose of covering the lacuna.

6.5. Even though the jurisdictional police station was very much nearby, the complaint has been filed before the respondent Police Station, with a delay of 22 hours.

6.6. It is the case of the prosecution that immediately after the occurrence, PW2 saw the victim [PW1] weeping and walking and the victim informed PW2 about the occurrence. But PW2 has turned hostile and did not support the prosecution case.

6.7. Excepting the testimony of PW1, there is no other evidence to corroborate the prosecution case.

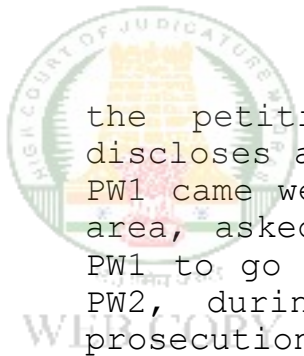
6.8. There was a motive between the parties, as to the missing of Goats. Therefore, on the instigation of PWs.3 & 4, the victim [PW1] has foisted the false complaint.

Therefore, the learned Counsel prays for interference.

7. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent / State made her submissions based on the prosecution evidence and would submit that the prosecution had clearly established the guilt against the accused. Therefore, according to the learned Government Advocate (Crl. Side), the conviction and sentence imposed by the trial Court, as confirmed by the lower appellate Court, does not require any interference.

8. This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

9. The case of the prosecution is that on 16.02.2005, around 12.00 noon, when PW1 left her Goats to graze near the Aandisamy Temple and standing under a nearby Tamarind Tree, the accused, who is also grazing his Goats, came from her back, gagged her mouth and abducted her to Aruvipallam and had forcible sexual intercourse with her. After the incident, PW1 witnessed bloodstains in her private services and in her in-skirt. When she tried to get-away,

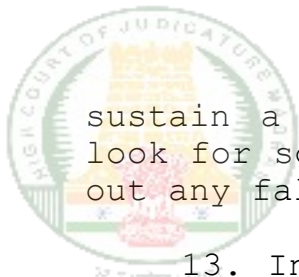


the petitioner intimidated and strangulated her that if she discloses anything to her parents, he would kill them all. On seeing PW1 came weeping, Ganesan [PW2], who was also grazing in the nearby area, asked her and PW1 informed PW2 about the incident. PW2 asked PW1 to go to her house and that he will talk to her parents. But, PW2, during his examination, did not support the case of the prosecution and the learned Counsel for the petitioner has took the same as one of the grounds. On a cursory look of the evidence, it appears that PW2 has admitted that PW1 came weeping and when he enquired, she told something, but, he could not understand anything as she was weeping. Therefore, from this portion of the evidence of PW2, it is clear that something has actually happened on the said date.

10. PW1, after reaching her home, informed her mother [PW3] around 01.00 pm, as to what has happened to her and according to PW3, she has washed the in-skirt worn by her daughter [PW1]. When PW4 [PW1's father] came home in the evening around 04.00 pm, PW3 informed her husband about the incident. According to PW4, he has also verified the incident with Ganesan [PW2] and since it was almost night, they went to the All Women Police Station, Vadamadurai, on the next day around 10.00 am and PW1 lodged the complaint [Ex.P1]. The learned Counsel for the appellant has took two grounds that there is a delay of almost 22 hours in lodging the complaint and that though the jurisdictional police station, ie., Natham Taluk Police Station, is very much available in close proximity, the complaint has been lodged before the respondent Police Station.

11. No doubt, there is a delay of 22 hours in lodging the complaint. But, the prosecution has explained the reasons for this delay in lodging the complaint. That apart, this is a case of rape, that too in a Village, where the parents would actually hesitate to lodge a complaint, taking in to account of their daughter's future. Therefore, this delay ground raised by the petitioner is not acceptable. Even according to the learned Counsel for the petitioner, the jurisdictional police station is Natham Taluk Police Station. The complaint was lodged before the respondent / Vadamadurai All Women Police Station. Since the complaint pertains to rape of a girl, the prosecution party lodged the complaint before the All Women Police Station, which, in the minds of this Court, appears to be reasonable.

12. A prosecutrix of a sex offence is, in fact, a victim of the crime and her evidence is similar to the evidence of an injured complainant or witness. If the testimony of the prosecutrix is found to be reliable, it is sufficient to convict the culprit and no corroboration of her evidence is necessary. As has been held by the Hon'ble Supreme Court in State of **Uttar Pradesh v. Chhotey Lal**, reported in **(2011) 2 SCC 550**, in prosecutions of rape, the law does not require corroboration and the evidence of the prosecutrix may



sustain a conviction. Only as an abundant caution, the Court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.

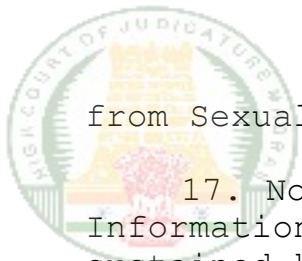
13. In the case on hand, the evidence of the prosecutrix [PW1] appears to be consistent. The motive ground raised by the petitioner that there was a dispute with regard to the missing of Goats and therefore, PW1, on the instigation of PWs.2 & 3, lodged the complaint, does not hold much water. Ours is a conservative society and therefore, a woman, more so a young unmarried woman, will not put her reputation in peril by alleging falsely about forcible sexual assault, on the instigation of her parents.

14. Though there are no external injuries on the body of the victim, that, by itself, does not discredit the evidence of the victim [PW1]. According to Dr.Uma Vaidhyanathan [PW13], who examined the victim and issued the certificate [Ex.P11], there is a trace for recent intercourse and there are four abrasions in her private parts. This medical evidence coupled with the oral testimony of the victim [PW1] supports the case of the prosecution that there was a forcible intercourse.

15. In **Chhotey Lal's** case (supra), the Hon'ble Supreme Court has held that the absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence. For better appreciation, the relevant portion is extracted as under:

"25. Although the lady doctor - PW5 did not find any injury on the external or internal part of body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal part of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear."

16. There was a dispute with regard to the age of the victim at the relevant point of time. According to the prosecution party, the victim was aged about 17 years, whereas, according to the Doctor [PW17], the victim was aged between 18 and 21 years. This Court is of the view that the age difference does not need to be given much weightage, inasmuch as the offender was tried under the provisions of the Indian Penal Code and not under the Protection of Children



from Sexual Offences Act.

17. No doubt, neither in the complaint [Ex.P1] nor in the First Information Report [Ex.P25], there is any mention about the injuries sustained by the victim [PW1] or about the washing of cloths by the mother of the victim [PW3]. But, as has been consistently held by the Hon'ble Supreme Court as well as by this Court, a complaint or an FIR is not an encyclopedia, where each and every minute details have to be recorded. In fact, in the statements recorded under Section 164 Cr.P.C., by the learned Judicial Magistrate No.3 [PW16], the victim has stated that her mother [PW3] has washed the in-skirt worn by her. That apart, the Analyst, Dr.Surendran Palmani [PW15], who prepared the serological report [Ex.P15], has reported the presence of spermatozoa in the [out] skirt worn by the victim and not in the washed in-skirt of the victim.

18. Unless and until there is a illegality, perversity or impropriety in the findings of the Courts below, this Court, under Sections 397 r/w 401 Cr.P.C., cannot re-appreciate the evidence. Since all the grounds raised by the petitioner lack merits, this Court is not inclined to interfere with the concurrent findings of the Courts below.

19. In the result,

- the Criminal Revision Case is dismissed;
- the trial Court is directed to secure the accused to undergo the remaining period of sentence;
- bail bonds, if any executed, shall stand terminated; and
- pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar (AD-II)

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/ /2021

Sub Assistant Registrar (CS)

gk

To

1.The Additional District and Sessions Judge,
Fast Track Court,
Dindigul.

2.The Additional Assistant Sessions Judge,
Dindigul.



3. The Principal District and Sessions Judge
Dindigul District.
4. The Chief Judicial Magistrate, Dindigul District.
5. The Superintendent, Central Prison, Madurai.
6. The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
8. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

Cr1.R.C. (MD) No. 569 of 2010
24.10.2019

(SE) CO
AP(18/01/2021) 8P 10C