

Bail Slip

The Appellant herein/Accused namely Karuthapandi, s/o.Shanmgam, was released on bail as per Order of this Court dated 05.12.2013 made in M.P.(MD) No.1/2013 in Crl.A.(MD) No.2/2013.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl.A.(MD)No.2 of 2013

Karuthapandi

... Appellant/Accused(Single)

Vs.

State represented by,
The Inspector of Police,
Town Police Station,
Sankarankovil,
Tirunelveli District.
(Crime No.372 of 2009)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to admit this appeal on file to call for the records from the lower Court and to duly set aside the Judgment passed by the Mahila Court, Tirunelveli, Tirunelveli District in his S.C.No.149 of 2010 dated 20.11.2012 by allowing this appeal.

For Appellants : Mr.S.Krishnamoorthy,
Legal Aid counsel.

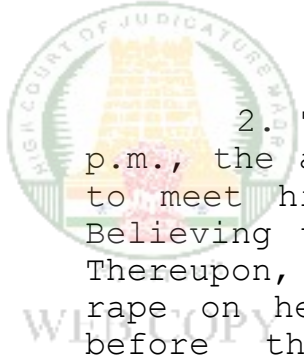
For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side).

* * *

JUDGMENT

The appellant was convicted and sentenced by the Court below vide Judgment dated 20.11.2012 in S.C.No.149 of 2010 as follows:-

Accused	Penal provisions u/s.	Punishment
Sole Accused	366 of IPC	To undergo 7 years R.I. with fine of Rs.5,000/-. In default, to undergo 6 months Rigorous Imprisonment.
	376 of IPC	To undergo 7 years R.I. with fine of Rs.5,000/-. In default, to undergo 6 months Rigorous Imprisonment.
	342 of IPC	To undergo 6 months R.I.
	506(ii) of IPC	To undergo 1 year R.I.



2. The prosecution case is that on 07.09.2009 at about 02.00 p.m., the appellant/accused induced the victim to come to his house to meet his daughter who was coming from her matrimonial home. Believing the words of the accused, the victim went to his house. Thereupon, the appellant locked the door from inside and committed rape on her. In this regard, the victim lodged Ex.P.1 complaint before the Town police station, Sankarankovil, leading to registration of Ex.P.11 First Information Report in crime No.372 of 2009 for the offences under Sections 376 and 506(i) of I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

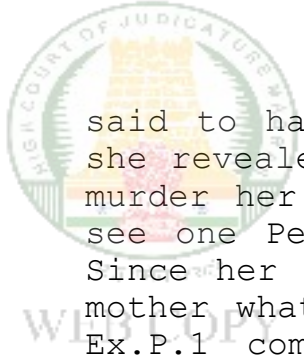
3. Investigation was undertaken and final report came to be laid against the appellant before the Judicial Magistrate, Sankarankovil, for the offences under Sections 366, 342, 376 and 506 (ii) of I.P.C. Cognizance of the offences was taken and the case was committed to the Sessions Court. It was made over to the Sessions Judge/Mahila Court, Tirunelveli, for trial in S.C.No.149 of 2010. Charges were framed against the appellant for all the aforesaid four offences. The appellant denied the charges and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Ex.P.1 to Ex.P.12. M.O.1 to M.O.5 were also marked. On the side of the appellant, no evidence was adduced. The learned trial Judge after a detailed consideration of the evidence on record, by the impugned Judgment convicted and sentenced the appellant as mentioned above. Challenging the same, this Criminal appeal came to be filed.

4. When the matter was taken up for hearing, there was no representation on the side of the appellant. This Court therefore directed the Registry to appoint a Legal Aid counsel. Today when the matter was taken up for hearing, the learned Legal Aid counsel appeared on behalf of the appellant and reiterated all the contentions set out in the appeal memorandum. The appellant's counsel submitted that the impugned Judgment will have to be reversed and to acquit the appellant of all the charges.

5. Per contra the learned Government Advocate(Crl. Side) submitted that the impugned Judgment does not call for any interference.

6. I carefully considered the rival contentions and perused the evidence on record.

7. The victim was examined as P.W.1. She had categorically deposed that on the occurrence date (ie.,) on 07.09.2009 at about 2.00 pm., she was returning home after finished the morning shift work in the local match works factory. One Jansy was the daughter of the appellant. The appellant told the victim that Jansy had come home and that she wanted to see the victim. Believing his words, the victim went to the house of the appellant. After she entered, the appellant locked the door from inside. He undressed the victim and committed forcible sexual intercourse on her. The appellant is

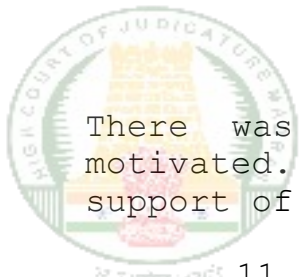


said to have threatened the victim with dire consequences that if she revealed, what happened to her mother or brother, he would have murdered her. When the victim came out of the house, she happened to see one Petchiyammal and Chandra. The victim then returned home. Since her mother was not at home, when she returned. She told her mother what happened only on the next day. Thereafter, they lodged Ex.P.1 complaint before Town police station, Sankarankovil. The testimony of the victim remained unshaken in the cross examination. The suggestion was put to the effect that there was some enmity between the victim's family and the appellant. The stand of the accused is that in view of this prior enmity, the false rape complaint had been lodged.

8. Except putting this feeble suggestion, the accused could not shake the victim's evidence in her cross examination. P.W.2 is the mother of the victim. P.W.2 stated that her daughter informed as to what happened only on the next day. P.W.2 would claim that they approached the respondent police station at about 11.00 p.m., on the next day of the occurrence. P.W.2 fairly admitted that she was not on talking terms with the appellant. P.W.2 had explained that when a dispute arose between the appellant and his wife, P.W.2 intervened. During the said quarrel, the accused is said to have beaten P.W.2. So she stopped talking to him. However, she stated that the relationship between the appellant and P.W.2 is that of son and mother.

9. P.W.3 is a co-worker of P.W.1. She stated that on 08.09.2009, when she asked the victim as to why she was looking dull, the victim is said to have replied that the accused had disgraced her. P.W.4 is the doctor who issued Potency Certificate in respect of the accused. P.W.5 is the radiologist. He had given a certificate Ex.P.4 stating that the victim was aged around 17 years. P.W.6 is one Petchiyammal who is from the very same street in which both the appellant and the victim were residing. She stated that on the occurrence date, she saw the appellant speaking to the victim and the victim going to the house of the appellant. P.W.7 is the brother of the victim. Like P.W.2 mother, he also became aware of what happened only later. Not much turns on his evidence. P.W.8 is the Mahazar witness. P.W.9 is also the Mahazar witness. P.W.10 is the doctor who medically examined the victim on 09.09.2009 at about 07.30 p.m. She issued Ex.P.6 certificate mentioning that there was no injury found on the body of the victim and there was no evidence of recent intercourse. P.W.11 is the forensic expert and he had stated that on the cloths recovered, there was no residual trace of semen. P.W.12 is the Judicial Magistrate before whom the statement of the victim was recorded under Section 164 of Cr.P.C. P.W.13 is the Sub Inspector of Police who registered the First Information Report. P.W.14 is the Inspector of Police who conducted the investigation and filed the final report.

10. The learned counsel appearing for the appellant pointed out that in this case, the complaint was not lodged immediately.



There was a delay. He also contended that the complaint is motivated. He placed heavy reliance on the testimony of P.W.10 in support of his contention that there was no evidence of intercourse.

11. I am not persuaded by the submissions of the learned counsel appearing for the appellant. In such cases, delay by itself cannot be said to be fatal to the case of the prosecution. The victim belongs to the last rung of the society. Her family was eking out their livelihood by working in a match factory. The victim was aged around 17 years. Therefore, the family could not have rushed the police station immediately. In any event, when the victim returned home, her mother was not at home. Therefore, I am of the view that the delay in lodging the First Information Report cannot be said to vitiate the prosecution.

12. Likewise the motive theory also does not carry much conviction. It is true that the mother of the victim was not on talking terms with the appellant. But as rightly observed by the learned trial Judge, no woman would stake the honour of her daughter for the purpose of settling some petty score.

13. In this case, the dispute between P.W.2 and the appellant does not seem to be all that serious. Therefore, I am not impressed by the motive theory projected by the defence.

14. The contention that no injuries were found on the person of the victim and that the doctor had certified that there was no evidence of sexual intercourse recently also does not impress me. The learned Government Advocate(Crl. Side) drew my attention to the following decisions of the Hon'ble Supreme Court.

"(i) (2000) 5 SCC 30 (State of Rajasthan V. N.K.)

18. ... The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injury or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case. In Sk.Zakir V. State of Bihar (1983) 4 SCC 10: 1983 SCC (Cri) 76: 1983 Cri LJ 1285 absence of any injury on the person of the prosecutrix, who was the helpless victim of rape, belonging to a backward community, living in a remote area not knowing the need of rushing to a doctor after the occurrence of the incident, was held not enough for discrediting the statement of the prosecutrix if the other evidence was believable. In Balwant Singh V. State of Punjab(1987) 2 SCC 27: 1987 SCC(Cri) 249: 1987 Cri LJ 971 the prosecutrix was made



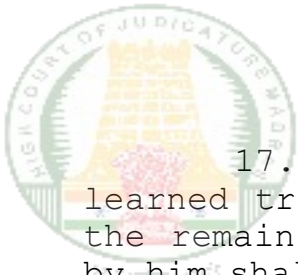
to lie down on a pile of sand. This Court held that absence of marks of external injuries on the person of the prosecutrix cannot be adopted as a formula for inferring consent on the part of the prosecutrix and holding that she was a willing party to the act of sexual intercourse.... The prosecutrix on account of age or infirmity or overpowered by fear or force may have been incapable of offering any resistance. She might have sustained injuries but on account of lapse of time the injuries might have healed and marks vanished."

(ii) (2011) 2 SCC 550 (State of U.P. V. Chhotey Lal)

"32. Although the lady doctor, PW5 did not find any injury on the external or internal part of the 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 a 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 parts 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."

15. In this case, the occurrence had taken place on 07.09.2009. The medical examination of the victim took place a full 53 hours later. Therefore, not much can turn on the certificate of the doctor indicating that there was no evidence of recent intercourse.

16. The appellant was given an opportunity under Section 313 of Cr.P.C., to explain the incriminating circumstances put against him. Except stating that the mother of the victim had engineered this case, the appellant could not come out with any other defence. I have already held that the motive described by the defence was not at all established. The evidence of the victim was not shaken. The victim had clearly and cogently given her testimony against the appellant. The Court below had an opportunity to observe the demeanor of the victim. After a careful re-appreciation of the entire evidence on record, I do not find any ground to take a different view. Therefore, the conviction as well as the sentence of imprisonment imposed by the Court below stands confirmed.



17. The 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. No costs.

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Sd/-

Assistant Registrar (A.D.II)

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/ /2020

Sub Assistant Registrar(CS)

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To:

1. The Sessions Judge,
Mahila Court, Tirunelveli, Tirunelveli District.
2. The Inspector of Police,
Town Police Station, Sankarankovil,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madras High Court-Madurai Bench,
Madurai.(2 copies)

Cr1.A.(MD)No.2 of 2013

Dated: 22.08.2019

PU (21.05.2020) 6P 6C