



Bail Slip

The Appellant/Accused namely Arasan @ Rajkumar, was released on bail as per order of this Court dated 06.11.2013 made in MP(MD)No.1 of 2013 in Crl.A(MD)No.261 of 2013 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.261 of 2013

Arasan @ Rajkumar

... Appellant

Vs

The State represented by
the Inspector of Police,
All Woman Police Station,
Srirangam,
Trichy.
(Crime No.05 of 2012)

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., against the Judgment and Conviction passed in S.C.No.31 of 2013, dated 29.07.2013, by the learned Sessions Judge, Mahila Court, Tiruchirappalli for the offence under Section 376 of IPC, wherein, the appellant was sentenced to undergo seven years rigorous imprisonment to pay a fine of Rs.2,000/- in default to undergo to three months rigorous imprisonment.

For Appellant : Mr.M.Subash Babu

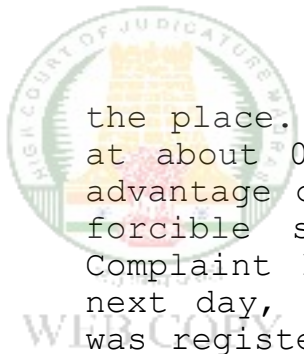
For Respondent : Mrs.S.Bharathi

Government Advocate (Crl.side)

JUDGMENT

The appellant was convicted for the offence under Section 376 of IPC and sentenced to seven years imprisonment and also levied with fine of Rs.2,000/-, vide Judgment dated 29.07.2013 in S.C.No.31 of 2013 on the file of the Mahila Court, Tiruchirapalli.

2.The prosecution case is that the appellant was working as Maistry/Supervisor at a construction site in Thiruvanaikovil, 4th Veedhi in Trichy. The victim and her two brothers were working as construction labour under the appellant. On 06.03.2012, after dropping her brother at the house, the accused told the victim that the building materials are lying outside the construction site and that, the victim has to come and put up everything inside and lock



the place. Thereupon, the victim had come to the construction site at about 08.30 p.m. According to the victim, the accused taking advantage of the situation, pushed her on a rope cot and committed forcible sexual intercourse on her. The victim lodged Ex.P1 Complaint before the All Women Police Station, Srirengam, on the next day, at about 9.30 a.m. Based on Ex.P1 Complaint, Ex.P8-FIR was registered in Crime No.05 of 2012 for the offence under Section 376 of IPC. Investigation was undertaken and after completing all the usual formalities, final report was laid against the accused before the Judicial Magistrate, Trichy for the offence under Section 376 of IPC. The case was committed to the Sessions Court in P.R.C.No.2 of 2013. The case was made over to the Mahila Court, Tiruchirapalli in S.C.No.31 of 2013. Charge under Section 376 of IPC was framed against the appellant. He denied the same and claimed to be tried. The prosecution examined seven witnesses and marked Ex.P1 to Ex.P17. M.O.1 to M.O.7 were also marked. On the side of the accused, no evidence was adduced. The learned trial Judge, after a detailed consideration of the evidence on record, came to the conclusion that the prosecution proved the charge against the appellant beyond reasonable doubt and convicted and sentenced him as mentioned above. Challenging the same, this appeal came to be filed.

3.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to acquit the appellant.

4.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent submitted that the impugned Judgment does not warrant any interference and wanted this Court to dismiss this appeal.

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

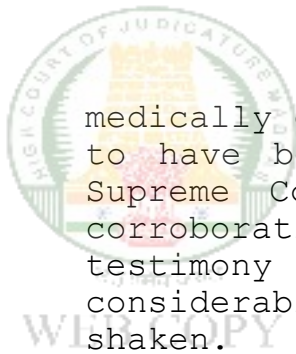
6.The primary contention of the appellant's counsel is that the testimony of the victim cannot be believed. He submitted that there is an inherent improbability in her allegation. He took me through the evidence, particularly, her cross examination. The victim admitted that they had worked under the appellant for about four months prior to the occurrence and during those four months, the appellant did not misbehave with her. The victim admitted that she came to the construction site at 08.30 p.m. She also admitted that she did not bring her sister or one of her brothers to accompany her. She admittedly had gone alone. She also admitted that there were two watchmen. According to her, there was a grill gate separating the veranda where the occurrence is said to have taken place and the street. Even she further admitted that from the street, it is possible to see the veranda through grill gate. The learned counsel also pointed out that after the alleged occurrence, she did not necessarily cross the police out post. She did



not lodge any complaint immediately. That apart, the place was a busy residential locality. Even if the victim had raised a slight alarm, it would have attracted attention. The victim admitted that she did not raise any alarm. The learned counsel appearing for the appellant also submitted that the medical evidence is not at all supportive of the prosecution case. The learned counsel took me through the evidence of P.W.3-Doctor Karpagam. He also submitted that the persons who had allegedly witnessed the recovery of cloths of the appellant, namely, Mari and Karthikeyan, were not examined. The learned counsel also took me through the evidence of the Investigating Officer to drive home his point that the case against the appellant has been cooked up. It is his contention that the victim was having an infatuation on the appellant and wanted the appellant to marry her. The appellant did not agree to her demand as he was already married. Therefore, in order to wreck vengeance on the appellant, a false case has been put up.

7.I am not persuaded by the aforesaid submission of the learned counsel appearing for the appellant. It is relevant to mention here that the defence of the accused was one of total denial. According to him, no such occurrence ever took place. It is not the case of the appellant that the victim/P.W.1 voluntarily had consensual relationship with him. That was never his defence. His defence consistently was that the victim had lodged a false complaint against him. Therefore, the outcome of this appeal will turn on whether the testimony of the victim inspires the confidence of this Court. It is true that the victim came to the construction site alone and without being accompanied by her brother or sister. The victim had stated that on the occurrence date that is 06.03.2012 at about 07.30 p.m. the accused dropped her elder brother Sivakumar in his two wheeler at their house and that, he instructed the victim to come to the construction site to gather all the building materials and put them inside the house that was under construction. This was because, the key was with the victim. It is not in dispute that the entire family of the victim was working under the appellant. The victim, her sister Devi as well as her brother Sivakumar were working at the construction site as labour. Therefore, the directive of the Maistry/Supervisor cannot be ignored. Therefore, there is nothing unnatural on the part of the victim in coming to the construction site at about 08.30 p.m. That apart, the place was a busy residential locality. The victim specifically alleged that there was a rope cot in the veranda and that when she was pushed, she fell on the same. If the victim wanted to cook up a false case, she could have very well alleged that the occurrence took place in the kitchen or bedroom which were not visible from the main road. The allegation is that the occurrence took place in the veranda. This makes me believe that the victim 's version is true. The menstrual cycle of the victim was over on 27.02.2012. The Doctor had stated that even thereafter, it is possible for some to have continuous bleeding. It is true

<https://hdsrcts.ecrorts.gov.in/csr/vires/> detected on the person of the victim, when she was



medically examined by P.W.3. But then, the offence of rape is said to have been committed, when there is penetration. The Hon'ble Supreme Court in more than one cases held that to insist on corroboration in such cases is not proper. One has to see if her testimony is of sterling quality. The victim was cross examined at considerable length by the defence. But her stand could not be shaken.

8.P.W.2 is the mother of the victim. She had stated that on the occurrence day, at about 7.30 pm., the accused came to her house and told her daughter to come to the site for clearing the materials. She had stated that her daughter went to the construction site and returned at around 08.30 p.m., crying. P.W.2 stated that she informed her son and that they went to the hospital at Srirengam. Since the bleeding was severe, they were referred to the main hospital at Trichy. Seeing her cry, somebody advised her to lodge a police complaint, after getting to know what happened. Thereupon, P.W.2 and her daughter and others went to the Srirengam All Women Police Station. Once again, they went to the hospital and only on the next day, they lodged Ex.P1 Complaint. The delay in lodging the complaint has been satisfactorily explained. P.W.2 also could not be shaken in the cross examination. P.W.2's testimony corroborates the sequence of events spoken to by P.W.1. The learned trial Judge, before whom P.W.1 appeared in person, was convinced that P.W.1 is speaking the truth. Of-course, as rightly pointed out by the learned counsel appearing for the appellant, there are some lacuna in the investigation. For instance, the mahazar witnesses were not examined. But I am satisfied that the prosecution case can rest safely on the testimony of the victim. The evidence of P.W.1 is reliable and trust worthy and commands the confidence of this Court. The prosecution has established its case beyond reasonable doubt. I find no ground to interfere. This criminal appeal is dismissed. The learned trial Magistrate shall take steps to enforce this order.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge,
Mahila Court,
Tiruchirappalli.

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



2. The Judicial Magistrate No.III,
Trichy

3. The Superintendent of Police,
Trichy District

4.The Inspector of Police,
All Woman Police Station,
Srirangam, Trichy.

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

6. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.SUBASH BABU, Advocate (SR-82146[F] dated 19/08/2019)

Crl.A(MD)No.261 of 2013
14.08.2019

MK (03.03.2020) 5P 9C